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A TREATISE
ON THE
LAW OF RAILWAYS,
Railway Companies,
AND
RAILWAY INVESTMENTS;

WITH
AN APPENDIX OF STATUTES, FORMS, ETC.

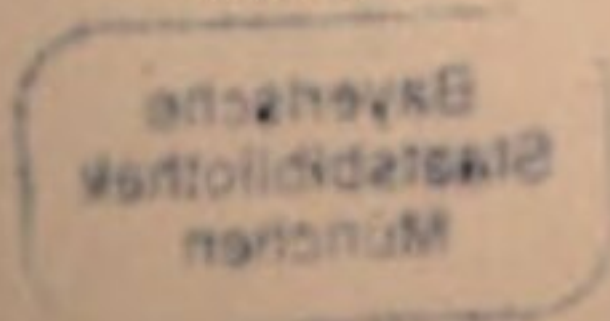
By SIR WILLIAM HODGES, KNT.,
CHIEF JUSTICE OF H. M. SUPREME COURT, CAPE OF GOOD HOPE.



FOURTH EDITION.
By CHARLES MANLEY SMITH, Esq.,
OF THE INNER TEMPLE AND MIDLAND CIRCUIT,
BARRISTER-AT LAW.

"Mobilitate viget, viresque acquirit eundo."
VIRG. ÆN. iv. 175.

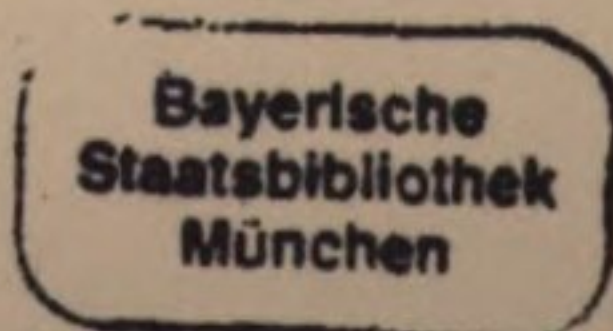
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PREFACE

TO

THE FOURTH EDITION.

IN preparing this, and the third Edition for the press, the Editor has interfered as little as possible with the original scheme of the Author, as the Work is already well known, and many persons who have become used to it might dislike any change of arrangement. In carrying out this plan, he had proposed to distinguish, in some way, the alterations in, and additions to, those Editions. But the vast number of Statutes which have been passed, and cases which have been decided both at Law and in Equity, since the second Edition was published,—and there is scarcely a day passes without some two or three cases affecting Railways being brought before the Courts,—rendered so many and such important alterations and additions absolutely necessary, that this was found impracticable. The Editor has, therefore, contented himself with endeavouring to weave them into the original text so far as he was able. But in doing so, he has found himself obliged to almost re-write a great part of the work. Several chapters are in fact entirely re-written, and others added by the Editor, whose task has been by no means an easy one; no pains having been spared to make the Work complete. And the Editor trusts that, considering the really arduous nature of the undertaking, (which has given him far more trouble than was originally calculated upon,) the pro-

fession and the public will view with indulgence any shortcomings which they may detect in the following pages.

There are several matters in the course of the legislation of the past year with regard to Railways, which appear to the Editor to require notice.

In the first place, the oft-discussed question of imposing a *general* limitation on the liability of Railway Companies, in respect of damages to passengers killed or injured by accidents, was not brought before the Legislature last year. But in many of the Private Acts for making railways having a terminus in London, which contain clauses compelling the Companies to run cheap trains for the Labouring Classes, there is introduced a clause limiting the liability of the Companies in respect of damages to such passengers, to an amount not exceeding 100*l.*, to be settled by an arbitrator, to be appointed by the Board of Trade (*a*). This looks like the “small end of the wedge;” and appears to be a concession of the *principle* of limiting the liability of Railway Companies in certain cases, after which, it will be more difficult for the Legislature to refuse to limit their liability in all cases to a certain definite sum. Such a limitation has been already imposed with regard to carriers of passengers by water, by the Merchant Shipping Act, 1854 (*b*); with regard to certain animals, by the Railway and Canal Traffic Act, 1854, post, p. 505; and with regard to parcels containing articles of great value in small compass, by the Carriers’ Act of 1830, post, p. 511.

(*a*) See post, p. 474, note (*c*); 535, note (*o*).

(*b*) 17 & 18 Vict. c. 104, s. 502; see now 25 & 26 Vict. c. 63, s. 54.

Another matter which appears to require notice, is this : The Court of Queen's Bench having decided upon the construction of the "Lands Clauses Consolidation Act, 1845," that, where *possession* of land or houses was *not* required by a railway company, a tenant from year to year, whose property was merely "injuriously affected" by the works of the company, could not recover any compensation to which he might be entitled before a magistrate, as he could if possession *was* required, the Metropolitan Railway Company, in 1863, procured the insertion in their Act of that year of a clause (c) giving jurisdiction to magistrates in such cases. And, in 1864, several other Railway Companies connected with the Metropolis did the same thing (d). The consequence is, that a vast deal of the time of the Metropolitan Police Magistrates is taken up with Compensation Cases, and the ordinary business of the Police Courts is postponed or delayed in consequence. Now a Police Court is essentially a criminal Court, and a Police Magistrate has no means of obtaining the assistance of a jury. It would seem, therefore, worthy of consideration whether too much civil business is not thus thrown into Police Courts, and whether the County Courts, with the occasional assistance of a jury, would not be a more satisfactory tribunal for the decision of such cases. In the City of London in some cases the Lord Mayor's Court, which appears a very suitable tribunal, is substituted for the justices.

A very important Act, passed in 1864, also demands attention. That is "The Improvement of Land Act, 1864," which for the first time enables landowners, under certain

(c) Post, p. 251.

(d) Post, p. 279, note (k).

circumstances, to raise money upon the security of their estates for making permanent railways for purposes connected with the improvement of the estate, and to charge their lands with money subscribed for the construction of railways. Twenty years ago, any attempt to pass such a Bill would have been hopeless. But the passing it shows the change of public feeling with regard to railways. That which was formerly considered a nuisance, is now looked upon in its true and proper aspect, as beneficial and an "improvement."

The Editor cannot conclude these remarks without calling attention to the fact, that the 3 & 4 Vict. c. 89, post, p. 580, (exempting stock-in-trade from liability to be rated to the poor-rate,) has only been continued till 1st October next, and thence to the end of the next Session of Parliament. The present time would therefore seem to afford a fit opportunity for the Legislature to yield to the earnest and oft-expressed wishes of the Judges, and lay down some rules for the rating of Railways to the poor-rate, which might remove the difficulties which at present exist in applying the Parochial Assessment Act to that species of property.

C. M. S.

1, HARE COURT, TEMPLE,
February, 1865.

PREFACE

TO

THE SECOND EDITION.

SINCE the First Edition of this book was published, the decisions in Law and Equity, on the various subjects treated of therein, have been as numerous as they are novel and important. It has been a work of great labour to codify these decisions, so as to weave them into the original Treatise—and so difficult in its execution—that it was only the recollection of the generous allowance made for former shortcomings, which encouraged the Writer to proceed until his task was accomplished.

W. H.

1, ESSEX COURT, TEMPLE,
December, 1854.

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ADDENDA ET CORRIGENDA.

Page 3, line 18 from top.—*For* “ No provision, however, is made,” &c., *read* “ Provision is also made,” &c.

9, lines 22 and 23 from top, *for* “ presented,” *read* “ deposited.”

15, n. (t).—*Scott v. Oakley* is also reported, 33 L. J. (Ch.) 612.

39, n. (c).—It appears from a statement in the “ Times ” newspaper, Jan. 7, 1865 (which is no doubt accurate), that the total capital expended on all the railways in the United Kingdom to the middle of 1864 was 391,396,680*l.*; gross traffic receipts in 1864, 33,182,490*l.*; miles open, 12,582.

52, n. (p).—*Add*, “ It would seem that these minutes are evidence against all who were present at the meeting, see *Ex parte Stock*, 33 L. J. (Ch.) 731.”

57, n. (q). } *Add*, “ See also *Fraser v. Whalley*, *Gartside v. Same*, Coram Wood, V.C., 11
61, n. (i). } L. T. (N. S.) 175.

57, n. (q). } *Add*, “ See also *M'Dougall v. Jersey Imperial Hotel Co.*, 34 L. J. (Ch.) 28.”
78, n. (u). }

58, n. (q).—*Add* a reference to *Gregory v. Putchell*, 11 L. T. (N. S.) 357.

82, line 12 from top, *add*, “ By 27 & 28 Vict. c. 90, s. 2, ‘ No letter or writing under hand only, containing any request or direction to any joint stock or other company or society, or to any secretary, &c., or to any banker, by the owner or proprietor of any stocks, funds or shares of or in any such company, &c., to pay the dividends or interest arising from any such stocks, &c., to any person named in such order, request or direction, shall be chargeable with stamp duty as a letter or power of attorney.’ ”

82, n. (h).—*Add*, “ Where an order was made by the Court of Chancery to allow the plaintiff, his solicitors and agents to inspect the books of a railway company; it was held that an accountant, who was also auditor to a neighbouring railway, was not such an agent. *Draper v. Manchester, Sheffield and Lincolnshire R. Co.*, 3 De G., F. & J. 23.

104, n. (r).—*Add*, “ See also *General Discount Co. v. Stokes*, 13 Weekly Rep. 138. A shareholder became bankrupt, a call was made, he afterwards obtained his certificate. This was held no answer to an action for calls.”

174, n. (x). } *Add* a reference to *Hammersmith and City R. Co. v. Piper*, Q. B. (M. T.) 1864,
225, n. (e). } in which a sheriff's jury having given P. compensation (separately
242, n. (r). } assessed) for, amongst other things, damage done to his house by the vibration caused by trains running on the railway, a rule for a certiorari was granted to quash the inquisition, but upon cause shown, the rule was suspended in order to give the company an opportunity of pleading to an action for the amount assessed by the jury, that the question might, if necessary, go to a court of error.

176.—*Fergusson v. L. B. &c. R. Co.* is also reported, 33 Beav. 103.

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- 184.—*Healey v. Thames Valley R. Co.* is reported, 11 L. T. (N. S.) 268; 13 Weekly Rep. 44.
184. } *Cameron v. Charing Cross R. Co.* is also reported, 33 L. J. (C. P.) 312, and stands
256. } for argument in Exch. Ch.
- 199, n. (f).—Add, "But see *Barker v. Metropolitan Railw. Co.*, in C. P., 13 Weekly Rep. 83. In that case A., the lessee of land, had underlet to B. by the year, and the company, in 1858, served both A. and B. with notice to treat, and both sent in claims, but nothing further was done then. In January, 1864, the company settled with B. and got possession, and in February A. sent in another claim for 850*l.*, but the company neither settled the claim nor issued their warrant for a jury within twenty-one days. A. brought her action for the 850*l.*, and the jury found that the company had *taken possession*, and gave her the 850*l.* The Court of Common Pleas refused to disturb the verdict, as the land was in fact taken possession of."
- 250.—Add "See also *Carter v. Great Eastern R. Co.*, Coram Stuart, V. C., 8 L. T. (N. S.) 197, as to compensation to a tenant who took a lease for twenty-one years after the company had served notice to treat on the owner in fee and the then tenant."
- 256, n. (l).—*Ricket v. Metropolitan R. Co.* stands for judgment in Exch. Ch. (H. T.) 1865.
- 288, end of n. (q). }
289, end of n. (s). } Add a reference to *Smith v. Whitmore*, 33 L. J. (Ch.) 218, 713.
- 296, n. (x).—For "*R. v. Plews*," read "*Re Plews*."
- 334, n. (p).—After "*Brandon v. Brandon*," add "*Re Apperley's Estate and The Hereford, Hay and Brecon R. Co.*, 11 L. T. (N. S.) 335; 13 Weekly Rep. 134; Wood, V. C."
- 338, n. (i).—Add, "*Re Bowes*, 33 L. J. (Ch.) 711, where the railway company were held not bound to pay the costs of bringing trustees and remaindermen before the court. The question is, were the parties *necessarily* served; if so, the company must pay the costs."
- 414, n. (m).—Add a reference to *Workman v. Great Northern R. Co.*, 32 L. J. (Q. B.) 279.
- 432, top line.—For "14 & 15 Vict. c. 105," read "14 & 15 Vict. c. 64."
- 435, line 21 from top.—Erase "no," and for "however" substitute "also."
- 436, line 2 from top.—Erase "no," and after the word "provision," insert "also."
505. } *Allday v. Great Western R. Co.* is also reported, 34 L. J. (Q. B.) 5; 11 Jur. (N. S.)
510. } 12.
- 522, n. (e).—Add, "See *Boyd v. Fitt*, 14 Ir. C. L. R. 43, which was an action by a principal against an agent for violation of duty as agent. In that case the Lord Chief Baron said, 'It is difficult to reconcile all the cases which have been determined upon this question of damages being sufficiently proximate or of being too remote. It is difficult, if not impossible, to apply any rule which will determine all cases. Notwithstanding what has been said of the proposition laid down in *Hadley v. Baxendale*, I entirely concur in what seems to have been the opinion of Mr. Justice Crompton in *Smeed v. Foord*, and of Mr. Baron Wilde in *Gee v. Lancashire and Yorkshire R. Co.*, that the rule professed to be laid down in *Hadley v. Baxendale* is not capable of meeting all cases.'"
- 576, n. (n).—Add, "See also *Langmead v. Maple*, in C. P. (H. T.) 1865."
- 600, n. (m).—*R. v. Midland R. Co.* is also reported 11 Jur. (N. S.) 14.
- App. 42.—To 8 & 9 Vict. c. 18, s. 145 } add a reference to *Alexander v. North Eastern*
,, 98.—To 8 & 9 Vict. c. 20, s. 143 } *R. Co.* in Q. B. (H. T.) 1865.

THE LAW RELATING TO RAILWAYS.

PART I.

THE STATUTE LAW APPLICABLE TO RAILWAYS, INCLUDING
MATTERS OF PARLIAMENTARY REGULATION.

CHAPTER I.

ON THE FORMATION OF RAILWAY COMPANIES.

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1. *Introductory Remarks.*

SUCCESSFUL railway enterprise having induced the capitalists of this kingdom to embark an almost incredible amount of money in forming these great national works, the Legislature has not permitted a subject so deeply important to public and private interests to escape its observation, and therefore railway legislation has attracted no small share of attention in Parliament. It is the object of this part of the work to present to the reader, in a concise form, the whole of the statute law applicable to railways in general, and all parliamentary regulations having reference to railway legislation.

Contents of
Par I.

Until the year 1844 (*a*), the parties who intended to apply to Parliament for a railway act were entrusted with the entire management of the proposed undertaking, and they exercised their own discretion in proceeding to carry out the objects in view. Prospectuses were circulated—deposits or subscriptions received—certificates of shares issued—and contracts made, with landowners and others, without interference or control on the part of the Legislature.

In 1844, however, an Act of Parliament was passed, called "The

(*a*) The 6 Geo. 1, c. 18, known as the Bubble Act, was repealed by 6 Geo. 4, c. 91.

The Companies
Act, 1862.

Joint Stock Companies Registration Act" (*b*), which required railway companies to be registered. But that act, as well as various other acts of Parliament subsequently passed on the subject, has been repealed; and the act now in force for consolidating and amending the laws relating to the incorporation, regulation and winding-up of trading companies and other associations, is "The Companies Act, 1862" (*c*), which repealed all the previous acts, and came into operation on the 2nd of November in that year. It becomes therefore unnecessary in this edition to notice the previous acts or the decisions upon them (*d*); and our object in this chapter will be to notice such of the provisions of "The Companies Act, 1862," as apply to the constitution and incorporation of railway companies. It is obvious, however, that they apply to other companies as well as railway companies.

There are so many difficulties attending the transactions of a railway company not registered in accordance with the provisions of "The Companies Act, 1862," or incorporated by special Act of Parliament,—(for though not exactly *partners* in the strict sense of that term, the projectors may very likely, without intending to do so, incur a liability similar to that of partners (*e*); and if the company consists of more than twenty persons, it will be illegal, unless registered (*f*),)—that when a sufficient number of persons, *i. e.* seven or more, can agree as to the formation of a company for the purpose of making a railway, the best course for them to pursue, until they can get a special Act of Parliament conferring the necessary powers upon them, is to avail themselves of the provisions of the Act of 1862, and register themselves as a preliminary company for the purpose of obtaining a special Act of Parliament.

(*b*) 7 & 8 Vict. c. 110. In *Shaw v. Holland*, 15 M. & W. 136; 4 Railw. Cas. 150; 15 Law J. (Exch.), 87, where a company was incorporated by an act of Parliament previously to the 1st November, 1844, and they afterwards raised additional capital under a new subscription contract, for the purpose of applying to Parliament to form an extension line of railway, to be called "The Shipley and Colne Railway," and there were some shareholders in that railway who had no interest in the original line, it was decided, that the shareholders in the Shipley and Colne Railway were not a company the formation of which commenced after the 1st November, 1844, within the meaning of the 2nd section of this statute. See also sect. 60, and *Baker v. Plaskit*, 5 C. B. 262; 17 Law J. (C. P.), 89.

(*c*) 25 & 26 Vict. c. 89. See Appendix.

(*d*) They will be found in the second edition of this work. See further on these acts Lindley on Partnership, and Thring's

Law and Practice of Joint Stock Companies.

(*e*) In *Bright v. Hutton*, 3 H. L. C. 368, Lord Wensleydale said, "In the case of provisional committees, or the projectors of a company, it is now perfectly well settled law, and acted upon in every court of law in Westminster Hall, that there is no partnership between them, no common power of binding each other merely by such a relation; each binds himself by his own acts only. There are, therefore, very few creditors of such a body collectively, though many of one, two, three or more acting individuals, who compose the committee, or are projectors; and so there may be a series of contracts to which there are different contributories, according as they have been authorized by different persons, very few binding all, and those only upon the rare accident of each individual authorizing that particular contract." See also *Hamilton v. Smith*, 5 Jur. (N. S.) 32.

(*f*) 25 & 26 Vict. c. 89, s. 4.

Where, indeed, all landowners and other parties beneficially interested are *consenting* to the making of a railway or the execution of new works connected with or for the purposes of existing railways, they may obtain power to do so by a certificate from the Board of Trade, on complying with the conditions of "The Railways Construction Facilities Act, 1864" (*g*), without being obliged to procure a special act. And in certain cases railway companies already established may obtain further powers by a similar certificate from the Board of Trade, on complying with the conditions of "The Railway Companies Powers Act, 1864" (*h*). Both these acts are printed at length in the Appendix; they are, therefore, not further adverted to here. But it is to be observed that, on any such application to the Board of Trade, proceedings before the Board may be stopped by any *railway or canal company* which would be affected in any way by the proposed certificate, and is desirous of being heard against the application, lodging a notice (in writing) of opposition at the office of the Board of Trade; in which case further proceedings must be in Parliament (*i*). No provision, however, is made for *individuals* opposing the application.

Certificates from Board of Trade under Acts of 1864.

But let us shortly consider the provisions of "The Companies Act, 1862."

The Companies Act, 1862.

By sect. 4 it is enacted, that no company, association or partnership consisting of more than twenty persons, shall be formed (*j*) for the purpose of carrying on any other business [than banking] that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under that act, or is formed in pursuance of some other act of Parliament, or of letters-patent, or is engaged in working mines in the stannaries.

Prohibition of partnerships of more than twenty persons unless registered.

Sect. 6. Any *seven or more* (*k*) persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this act in respect of registration, form an incorporated company, with or without limited liability.

Mode of forming company.

Sect. 7. The liability of the members of a company formed under this act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake

Mode of limiting liability.

(*g*) 27 & 28 Vict. c. 121, post, Appendix.

(*h*) 27 & 28 Vict. c. 120, post, Appendix.

(*i*) 27 & 28 Vict. c. 120, s. 7; c. 121, s. 9.

(*j*) It will be observed that there is no

penalty attached to a partnership of more than twenty, as there is to a *company* of less than seven, by s. 48.

(*k*) And see s. 48, for the prohibition against carrying on business with *less* than seven members.

by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

2. *Memorandum of Association of Company under "The Companies Act, 1862."*

Memorandum of association of a company limited by shares.

Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares (*l*), the memorandum of association must contain the following things:—

1. The name of the proposed company, with the addition of the word "limited" as the last word in such name (*m*).
2. The part of the United Kingdom, whether England, Scotland or Ireland, in which the registered office of the company is proposed to be situate.
3. The objects for which the proposed company is to be established.
4. A declaration that the liability of the members is limited.
5. The amount of capital with which the company proposed to be registered, divided into shares of a certain fixed amount,

Subject to the following regulations:—

1. That no subscriber shall take less than one share.
2. That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes (*n*).

Memorandum of association of a company limited by guarantee.

When a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company, in the event of the same being wound up, the memorandum of association (*o*) must contain the following things:—

1. } The same as in the case of a company limited by shares.
2. }
3. }

4. A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for

(*l*) A company, limited by shares, may so far modify the conditions contained in this memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock; but save as aforesaid, and save as is provided in the case of a change of name, no alteration can be made

by any company in the conditions contained in its memorandum of association. Sect. 12. Semble, this would not authorize the issue of preference shares. *Moss v. Syers*, 32 L. J. (Ch.) 711.

(*m*) But this name must not be identical with that by which a subsisting company is already registered or so nearly resembling the same as to be calculated to deceive. Sect. 20. As to change of name, see sect. 13, and 26 & 27 Vict. c. 118, s. 36, et seq., post, Appendix.

(*n*) Sect. 8.

(*o*) Vide supra, n. (*l*).

payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves such amount as may be required, not exceeding a specified amount (*p*).

Where a company is formed on the principle of having no limit placed on the liability of its members, the memorandum of association (*q*) must contain the following things:—

Of an unlimited company.

1. The name (*r*) of the proposed company.
2. The part of the United Kingdom, whether England, Scotland or Ireland, in which the registered office of the company is proposed to be situate.
3. The objects for which the proposed company is to be established (*s*).

The memorandum of association must bear the same stamp as if it were a deed and be signed by each subscriber in the presence of and be attested by one witness at least. It will, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of the Act of 1862.

Stamp, signature, and effect of memorandum of association.

3. *Articles of Association.*

The memorandum of association *may*, in the case of a company limited by shares, and *must*, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum, and prescribing such regulations for the company as the subscribers to the memorandum deem expedient. The articles must be expressed in separate paragraphs, numbered arithmetically, and may adopt all or any of the provisions contained in Table A. in the first schedule to the act (*t*). They must, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of *capital* with which the company proposes to be registered; and, in the case of a company, whether limited by guarantee or unlimited, that has *not* a capital divided into shares, state the number of *members* with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees

Regulations to be prescribed by articles of association.

(*p*) Sect. 9.

(*q*) Vide supra, p. 4, n. (*l*).

(*r*) Vide supra, p. 4, n. (*m*).

(*s*) Sect. 10.

(*t*) Vide post, Appendix.

payable on registration. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber *must* take one share at least, and write opposite to his name in the memorandum of association the number of shares he takes (*u*).

Application of
Table A.

In the case of a company limited by shares, if the memorandum is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in Table A. (*x*), those regulations will, so far as they are applicable, be deemed to be the regulations of the company, in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered (*y*).

Stamp, signature,
and effect of
articles.

The articles must be *printed*; *stamped* like a deed; and *signed* by each subscriber in the presence of, and *attested* by, one witness at least. When registered, they will bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors and administrators, to conform to all the regulations contained in such articles, subject to the provisions of the Act of 1862; and all monies payable by any member to the company in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company; and in England and Ireland to be in the nature of a specialty debt (*z*).

4. General Provisions.

Registration of
memorandum
and articles.

Fees.

The memorandum and articles of association, if any, must be delivered to the registrar of joint-stock companies, who will retain and register them; and the fees specified in Table B., in the first schedule to the Act of 1862 (*a*), must be paid to the registrar by a company having a capital divided into shares; and the fees specified in Table C. by a company *not* having a capital divided into shares (*b*).

Certificate.

Upon registration the registrar will certify that the company is incorporated (*c*); and, in the case of a limited company, that the company is limited. The subscribers of the memorandum, together with such other persons as may from time to time become members of the company, will thereupon be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the

Effect of registration.

(*u*) 25 & 26 Vict. c. 89, s. 14.

(*x*) Vide post, Appendix.

(*y*) Sect. 15.

(*z*) Sect. 16.

(*a*) Vide post, Appendix, for the tables of fees, which may be reduced by the Board of Trade.

(*b*) Sect. 17.

(*c*) This certificate is conclusive evidence that all the requisitions of the act in respect of registration have been complied with. Sect. 18. As to altering certificate on change of name, see sect. 20.

functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company, in the event of its being wound up as hereinafter mentioned (*d*).

Copies of the memorandum and articles must be forwarded to every member on request, on payment of one shilling, under a penalty of one pound (*e*).

Besides the provisions we have already noticed, the Companies Act, 1862, contains others relating to—

Second part. The distribution of the capital and liability of members of companies and associations.

Third part. The management and administration of companies and associations.

Fourth part. The winding-up of companies and associations.

Fifth part. The Registration Office.

Sixth part. Application of the act to companies registered under the [old] joint-stock companies acts.

Seventh part. Companies authorized to register under the Act of 1862.

Eighth part. Application of the act to unregistered companies.

Ninth part. Repeal of acts and temporary provisions.

But as the act is printed at length in the Appendix, it is not thought necessary to advert to its provisions any further in this place: more especially as railway companies cannot well be practically worked without a private act of Parliament; the proper course of proceeding to obtain which is pointed out in the following chapter.

(*d*) Sect. 18.

(*e*) Sect. 19.

CHAPTER II.

COURSE OF PROCEEDING UPON RAILWAY BILLS IN PARLIAMENT.

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1. *Progress of the Bill through the Commons.*

Works extant on the law and practice of Parliament.

IT is not the object of this work to treat of the law and practice of Parliament, in proceeding with private bills. Several able publications are already extant upon this subject (*a*); and as all railway bills are entrusted to the care of parliamentary agents (*b*), who are intimately acquainted with the practice of Parliament, it is unnecessary to discuss such matters in detail. But, as the course of procedure observed in passing a railway bill through Parliament may be a matter of interest to many persons, a short summary of the proceedings which take place, is given in the text; and a reference is also given to the Standing Orders of both Houses of Parliament, issued for the Session 1865, so far as they relate to railway bills, and the formation of the committees to which they are referred (*c*).

In which House railway bills originate.

By the privilege of the House of Commons, all bills which involve pecuniary charge upon the Queen's subjects must originate in that house (*d*); and consequently railway bills were formerly passed first in the Commons. But in 1858, pursuant to the recommendation of the committee on railway and canal legislation, it was resolved by the Commons not to insist on its privileges with regard to any clauses in private bills sent down from the House of Lords, which refer to tolls and charges for services performed, and are not in the nature of a

(*a*) May on the Law and Usage of Parliament, Book III. 5th ed. 1863; Bristowe's Private Bill Practice; Frere on the Practice of Committees of the House of Commons; Riddell on Railway Parliamentary Pract.; Lumley's Parliamentary Pract., and Beavan & Walford's Parliamentary Cases are works which treat on the practice of Parliament.

(*b*) Various duties and responsibilities are imposed upon the parliamentary agent who has charge of a Private Bill in the Commons. He is personally responsible for the observance of the rules prescribed by Parliament, and also for the payment of all fees and charges; and is subject to other regulations imposed by Speaker's Orders. See further on this subject, May on the Law and Usage of Parliament, 640, 4th ed.

(*c*) In the first edition of this work the Standing Orders were printed at length. Two reasons have led to their omission in subsequent editions, viz., first, the author's great desire that the work should be confined to moderate limits,—and, secondly, the experience, that the Standing Orders for one year cannot be taken as a safe guide in any subsequent years. The Standing Orders in both Houses of Parliament are now published annually at a moderate cost; and the last authorized edition of them ought to be obtained by the promoters of any railway bill, as no other version of them can be relied upon.

(*d*) May on the Law, &c., of Parliament, 5th ed. 440.

tax (*e*). Consequently railway bills may now originate in either house. But for various reasons, and especially as in former editions of this work the progress of the bill through the Commons was first considered, it is thought desirable to adhere to that arrangement in the present edition.

At the commencement of each Session the Chairman of the Committee of Ways and Means seeks a conference with the Chairman of Committees of the House of Lords, for the purpose of determining in which House of Parliament the respective private bills should be first considered, and such determination is reported to the House (*f*).

Decided on conference between chairmen of committees.

Let us then proceed to notice some of the principal preliminary matters required by the Standing Orders of *both* Houses, compliance with which must be proved before one of the Examiners of petitions for private bills (*g*), before any railway bill can be introduced into either the House of Commons or the House of Lords.

But it must first be remarked, that no private bill can be brought into the House of Commons but upon a petition first presented, which has been duly deposited in the Private Bill Office (*h*), and indorsed by one of the examiners, with a printed copy of the proposed bill annexed. And such petition must be signed by the parties, or some of them, who are suitors for the bill (*i*). We shall presently see that this petition must be presented on or before 23rd December; and before the petition is presented, certain notices to owners, &c., must be given. In the House of Lords, however, railway bills are excepted from the rule which requires a petition to be presented for leave to bring in a private bill (*k*). But a printed copy of every railway bill proposed to be introduced in either House, must be deposited in the office of the clerk of the Parliaments, on or before the 23rd December (*l*).

Petition for bill in Commons.

Not in Lords.

The requirements of the Standing Orders, which, except where specially noticed, are the same in both Houses, have been arranged in the following order:—

1. Notices by advertisement.
2. Notices and applications to owners, lessees and occupiers of lands and houses.
3. Documents required to be deposited, and the times and places of deposit.
4. Form in which plans, books of reference, sections and cross-sections shall be prepared.
5. Estimates and deposit of money and declarations. Each of which it is proposed to treat separately. Compliance with these

(*e*) C. S. O. 211.

(*f*) C. S. O. 78.

(*g*) C. S. O. 12; L. S. O. cxci. 5.

(*h*) A list of petitions is there kept, called "The General List of Petitions," in

which petitions are numbered in the order of their deposit. C. S. O. 214.

(*i*) C. S. O. 177.

(*k*) L. S. O. cxxxix.

(*l*) L. S. O. cxci. 2.

orders is of such vital importance that it is thought advisable to print them at full length.

1. *Notices by Advertisement.*

Notices to state objects of application and powers intended to be applied for.

It is required by the Standing Orders of both Houses (*m*), that—

“ In all cases where application is intended to be made for leave to bring in a bill relating to making, maintaining, varying, extending or enlarging any railway, notices shall be given stating the objects of such intended application, and the time at which copies of the bill will be deposited in the Private Bill Office; and if it be intended to apply for powers for the compulsory purchase of lands or houses; or for extending the time granted by any former act for that purpose; or to amalgamate with any other company; or to sell or lease the undertaking; or to purchase or take on lease the undertaking of any other company; or to amend or repeal any former act or acts; or to levy any tolls, rates or duties; or to alter any existing tolls, rates or duties; or to confer, vary or extinguish any exemptions from payment of tolls, rates or duties; or to confer, vary or extinguish any other rights or privileges;—the notices shall specify such intention; and the whole of the notice relating to the same bill shall be included in the same advertisement, which shall be headed by a short title descriptive of the undertaking or bill [and see Order 67].

Notices to contain names of parishes, &c.

“ Such notices shall also contain a description of all the termini, together with the names of the parishes, townships, townlands and extra-parochial places from, in, through or into which the work is intended to be made, maintained, varied, extended or enlarged, or in which any lands or houses intended to be taken are situate; and shall state the time and place of deposit of the plans, sections, books of reference and copies of the Gazette notice respectively, with the clerks of the peace, sheriff clerks, parish clerks, clerks of vestries or district boards, schoolmasters, session clerks, town clerks and clerks of unions, as the case may be (*n*). (See Nos. 29, 30, 36 and 37, post, p. 13.)

Publication of notices in Gazettes and newspaper.

“ In the months of October and November, or either of them, immediately preceding the application for a bill, such notices shall be published once in the *London, Edinburgh* or *Dublin Gazette*, as the case may be, and in three successive weeks in some one and the same newspaper of the county in which the city, county of a city, town, county of a town, or lands to which such bill relates, shall be situate; or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto; and if such bill relate specially to any particular city, county of a city, town or county of a town in which any newspaper is published, such notices shall be published in three successive weeks in one and the same newspaper published therein; or if such bill do not relate to any particular city, county of a city, town, county of a town, or lands, such notices shall be published once in the *London, Edinburgh* or *Dublin Gazette* only, as the case may be; and if such bill relate to lands situate in more than one county, such notices shall be inserted once in each of three successive weeks in some newspaper or newspapers which shall be published in *London* at least six days in the week, or in *Edinburgh* or *Dublin* at least two days in the week, as the case may be; and in a newspaper of the county in which the principal office of the company or companies, or other parties who are the promoters of any such bill, shall be situate; and in a newspaper of every county in which any new works are proposed to be constructed, or in which any lands are situate, in respect of which any new or further powers for the completion of works already authorized are intended to be applied for” (*o*).

2. *Notices and Applications to Owners, Lessees and Occupiers of Lands and Houses.*

Application to owners, &c., on or before December 15.

It is also required by the Standing Orders of both Houses (*p*), that—

“ On or before the 15th day of December immediately preceding the application for a bill by which any lands or houses are intended to be taken, or an extension of

(*m*) C. S. O. 13. The L. S. O. clxxx. 1, is the same, except that it does not require the notice to state the time at which copies will be deposited in the Private Bill Office.

(*n*) C. S. O. 14; L. S. O. clxxx. 2.

(*o*) C. S. O. 18; L. S. O. clxxx. 5.

(*p*) C. S. O. 19; L. S. O. clxxxi. 1.

the time granted by any former act for that purpose is sought, application in writing shall be made (q) to the owners or reputed owners, lessees or reputed lessees,

(q) The application must be as nearly as may be in the following form (which is the form required by L. S. O. : that required by C. S. O. is not quite so extensive).

No.

SIR,

WE beg to inform you, that application is intended to be made to Parliament in the ensuing session for "An Act" [*here insert the title of the act*], and that the property mentioned in the annexed schedule, or some part thereof, in which we understand you are interested as therein stated, will be required for the purposes of the said undertaking, according to the line thereof as at present laid out, or may be required to be taken under the usual powers of deviation to the extent of — yards on either side of the said line, which will be applied for in the said act, and will be passed through in the manner mentioned in such schedule.

We also beg to inform you, that a plan and section of the said undertaking, with a book of reference thereto, have been or will be deposited with the [several clerks of the peace or principal sheriff clerks, as the case may be] of the counties of — [*specify the counties in which the property is situate*], on or before the 30th of November, and that copies of so much of the said plan and section as relates to the [parish or extra-parochial place, as the case may be] in which your property is situate, with a book of reference thereto, have been or will be deposited for public inspection with the [clerk of the said parish, clerk of the parish of — adjoining to such extra-parochial place, schoolmaster of the parish, session clerk, town clerk of the royal burgh, or the clerk of the union in which such parish is included, as the case may be], on or before the 30th day of November, on which plans your property is designated by the numbers set forth in the annexed schedule.

As we are required to report to Parliament whether you assent to or dissent from the proposed undertaking, or whether you are neuter in respect thereto, you will oblige us by writing your answer of assent, dissent, or neutrality, in the form left herewith, and returning the same to us with your signature, on or before the — day of — next; and if there should be any error or misdescription in the annexed schedule, we shall feel obliged by your informing us thereof at your earliest convenience, that we may correct the same without delay.

We are, Sir,

Your most obedient servants,

To

[Note.—If the application be forwarded by post, the words "Parliamentary Notice" are to be printed or written on the cover.]

SCHEDULE REFERRED TO IN THE FOREGOING NOTICE.

Describing the Property therein alluded to, and the manner in which the Line of the proposed Work, as delineated upon the Plan and Section, will affect the same.

	Parish, Township, Townland or Extra- Parochial Place.	Num- ber on Plans.	Description.	Owner.	Lessee.	Occupier.	Description of the Section of the Line deposited, show- ing the greatest height of Embankment and depth of cutting, where the property is intersected by the cen- tre Line of the proposed Work.
Property in the Line of the proposed Work, as at present laid out (includ- ing property, any part of which is within eleven yards, or thereabouts, of the centre line of such proposed Work, as de- lineated upon the Plan).							
	Parish, Township, Townland, or Extra- Parochial Place.	Num- ber on Plans.	Description.	Owner.	Lessee.	Occupier.	
Property within the Limits of the Deviation intended to be applied for.							

Note.—Where the property is not intersected by the centre line, the description of the section is not given in the last column.

and occupiers of all lands and houses, so intended to be taken, or which may be taken as being within the limits of deviation defined upon the plan. All such notices shall be accompanied by a copy of the Standing Orders which regulate the time and mode of presenting petitions in opposition to bills.

Service of application.

"Such application shall be made by delivering the same personally to every such party, or by leaving the same at his usual place of abode, or, in his absence from the United Kingdom, with his agent, on or before the 15th day of December, or by forwarding the same, by post, in a registered letter, addressed with a sufficient direction to his usual place of abode, and posted on or before the 12th day of December at the chief post-office in *London, Manchester, Liverpool, Birmingham, Leeds, Newcastle-upon-Tyne, Norwich, Lincoln, Shrewsbury, Bristol, Exeter, Edinburgh, Glasgow, Aberdeen, Inverness, Dublin, Belfast, Cork or Athlone*, at such hours and according to such regulations as the postmaster-general shall from time to time appoint for the posting and registration of such letters (r).

Evidence of application.

"In all cases the written acknowledgment of the party applied to shall, in the absence of other proof, be sufficient evidence of an application having been made or notice given; and in case of an application or notice having been forwarded by post in a registered letter, the production of the post-office receipt for such letter, duly stamped in such form as the postmaster-general shall have appointed, shall be sufficient evidence of the due delivery of such letter, provided it shall appear that the same was properly and sufficiently directed, and that the same was not returned by the post-office as undelivered (s).

Lists of owners, &c., assenting, dissenting, and neuter.

"Separate lists shall be made of the names of such owners, lessees and occupiers, distinguishing those who have assented, dissented or are neuter in respect to such application, or who have returned no answer thereto; and where no written acknowledgment has been returned to an application forwarded by post, or where such application has been returned as undelivered at any time before the making up of such lists, the direction of the letter in which the same was so forfeited shall be inserted therein" (t).

Crown, &c., property.

Notice to owners, &c.

25. Previously to the deposit of a petition for leave to bring in a bill relating to crown, church or corporation property, or property held in trust for public or charitable purposes, or before the first reading of any such bill brought from the House of Lords, notice in writing of such application to Parliament shall be served upon the owners or reputed owners of such property, and the lessees or reputed lessees of such property, holding leases granted for a life or lives, or for any term of twenty-one years or upwards (u).

Alteration or repeal of provisions. Notice to owners, &c.

26. Previously to the deposit of a petition for leave to bring in a bill, whereby any express statutory provision then in force for the protection of the owner, lessee or occupier of any property, or for the protection or benefit of any public trustees or commissioners, corporation or person specifically named in such provision, is sought to be altered or repealed, (except in cases where the consent of such parties is, by S. O. 167, required to be proved before the committee on the bill,) notice, in writing, of such bill, and of the intention to alter or repeal such provision, shall be served upon every such owner, lessee or occupier, public trustees or commissioners, corporation or person (v).

Relinquishment of works.

Notice to owners.

27. Previously to the deposit of a petition for leave to bring in a bill, whereby the whole or any part of a work authorized by any former act is intended to be relinquished, notices, in writing, of such bill shall be served upon the owners or reputed owners, lessees or reputed lessees and occupiers of the lands in which any part of the said work intended to be thereby relinquished is situate; and the notices required by this order and by Orders 25 and 26 shall be served, and the service thereof proved, in the manner directed by Standing Orders, Nos. 20 and 21 (x).

Time for serving notices.

28. No notice served or application made on a Sunday or Christmas-day, or before eight o'clock in the forenoon or after eight o'clock in the afternoon of any day, shall be deemed valid, except in the case of delivery of letters by post (y).

(r) C. S. O. 20; L. S. O. clxxxi. 3.

(s) C. S. O. 21; L. S. O. clxxxi. 4.

(t) C. S. O. 22 (and see Order 42 directing the deposit of these lists in the Private Bill Office); L. S. O. clxxxi. 5.

(u) C. S. O. 25. See as to Charity

Estates, L. S. O. clxxix. 3, which requires notice to be given to the Attorney-General.

(v) C. S. O. 26.

(x) C. S. O. 27; L. S. O. clxxxi. 7.

(y) C. S. O. 28; L. S. O. clxxxi. 8.

3. Documents required to be deposited and the Times and Places of Deposit.

Deposits on or before 30th November.

It is also required by the Standing Orders of both Houses, that in cases of railway bills:—

Plans, books of reference, and sections, with clerk of the peace, &c.

29. A plan, and also a duplicate thereof, together with a book of reference thereto, and a section, and also a duplicate thereof, as hereinafter described, shall be deposited for public inspection at the office of the clerk of the peace for every county, riding or division in England or Ireland, or in the office of the principal sheriff clerk of every county in Scotland; and where any county in Scotland is divided into districts or divisions, then in the office of the principal sheriff clerk in or for each district or division, in or through which the work is proposed to be made, maintained, varied, extended or enlarged, or in which such lands or houses are situate, on or before the 30th day of November, immediately preceding the application for the bill (z).

30. In the case of railway bills, a published map to a scale of not less than half an inch to a mile (or in Ireland to a scale of not less than a quarter of an inch to a mile), with the line of railway delineated thereon, so as to show its general course and direction, shall, on or before the 30th day of November, be deposited at the office of the clerk of the peace or sheriff clerk, together with the plans, sections and book of reference (a).

Published map to be deposited with clerk of peace, &c.

31. The clerks of the peace or sheriff clerks, or their respective deputies, shall make a memorial, in writing, upon the plans, sections and books of reference so deposited with them, denoting the time at which the same were lodged in their respective offices, and shall at all seasonable hours of the day permit any person to view and examine one of the same, and to make copies or extracts therefrom; and one of the two plans and sections so deposited shall be sealed up and retained in the possession of the clerk of the peace or sheriff clerk until called for by order of one of the two Houses of Parliament (b).

Clerks of peace to endorse a memorial on plans, &c.

32. In cases where the work shall be situate on tidal lands within the ordinary spring tides, a copy of the plans and sections shall, on or before the 30th day of November, be deposited at the offices of the Board of Admiralty and of the Board of Trade (c).

Tidal lands. Plans at Admiralty.

33. A copy of all plans, sections and books of reference required by the orders of the House to be deposited in the office of any clerk of the peace or sheriff clerk, on or before the 30th day of November immediately preceding the application for the bill, together with the said published map with the line of railway delineated thereon, so as to show its general course and direction, shall, on or before the same day, be deposited in the office of the Board of Trade (d).

Plans, &c., at the office of the Board of Trade.

34. On or before the 30th day of November, a copy of the said plans, sections, books of reference and published map, with the line of railway delineated thereon, shall be deposited in the Private Bill Office of this House (e).

Deposit of plans, &c., in Private Bill Office.

35. In cases where any portion of the work shall be situate within the limits of the metropolis, as defined by "The Metropolis Management Act, 1855," a copy of so much of the plans and sections as relates to such portion of the work, shall, on or before the 30th day of November, be deposited at the office of the Metropolitan Board of Works (f).

Deposit of plans, &c., with Metropolitan Board of Works.

36. On or before the 30th day of November, a copy of so much of the said plans and sections as relates to each parish, in or through which the work is intended to be made, maintained, varied, extended or enlarged, or in which any lands or houses intended to be taken are situate (g), together with a copy of so much of the book of reference as relates to such parish, shall be deposited with the parish clerk of each such parish in England; or, in the case of any extra-parochial place, with the

Deposit of parish plan, section, and book of reference, with parish clerk, &c.

(z) C. S. O. 29; L. S. O. clxxxii. 1.

(a) C. S. O. 30; L. S. O. clxxxii. 4.

(b) C. S. O. 31. See also 1 Vict. c. 83, Appendix, post; L. S. O. clxxxii. 2.

(c) C. S. O. 32; L. S. O. clxxxii. 3. And see 14 & 15 Vict. c. 49, post, App. By the Harbours Transfer Act, 1862, 25 & 26 Vict. c. 69, s. 8, the Board of Trade is substituted for the Board of Admiralty,

after 31st December, 1862, in certain cases where railway acts contain provisions for protection of navigation.

(d) C. S. O. 33; L. S. O. clxxxii. 5.

(e) C. S. O. 34. By L. S. O. clxxxii. 6, these copies must be deposited in the office of the Clerk of the Parliaments.

(f) C. S. O. 35.

(g) See plan in S. O.

parish clerk of some parish immediately adjoining thereto; or, in case of any place within the limits of the metropolis, as defined by the act 18 & 19 Vict. c. 120, intituled "An Act for the better Local Management of the Metropolis," except the city of London, with the clerk of the vestry of each parish in Schedule A., and with the clerk of the district board of parishes in Schedule B. of the said act; with the schoolmaster of each such parish in Scotland, or if there be no schoolmaster of any such parish, then with the session clerk, or in royal burghs with the town clerk; and with the clerk of the union within which such parish is included in Ireland (*h*). (See 1 Vict. c. 83, Appendix, post.)

Gazette notice to be deposited with plans, &c.

37. Wherever any plans, sections and books of reference, or parts thereof, are required to be deposited, a copy of the notice published in the Gazette of the intended application to Parliament, shall be deposited therewith (*i*).

Deposits on or before the 23rd December.

Petition for bill, &c., to be deposited in Private Bill Office.

38. Every petition for a private bill, headed by a short title descriptive of the undertaking or bill, corresponding with that at the head of the advertisement, with a declaration signed by the agent (*j*), and a printed copy of the bill annexed shall be deposited in the Private Bill Office, on or before the 23rd day of December; and such petition, bill and declaration shall be open to the inspection of all parties, and printed copies of the bill shall also be delivered therewith for the use of any member of the House or agent who may apply for the same (*k*).

Deposit of bills at the Board of Trade, Admiralty, and Home Office.

40. On or before the 23rd day of December, a printed copy of every railway and canal bill, and of every bill for incorporating or giving powers to any company, shall be deposited in the office of the Board of Trade; a printed copy of every bill relating to any dock, harbour, navigation, pier or port, shall be deposited in the office of the Board of Admiralty and in the office of the Board of Trade: and a printed copy of every bill relating to turnpike roads, at the office of the Secretary of State for the Home Department (*l*).

Deposit of bills with Metropolitan Board of Works.

41. On or before the 23rd day of December, a printed copy of every railway bill whereby any work shall be authorized within the limits of the metropolis as defined by "The Metropolis Management Act, 1855," shall be deposited at the office of the Metropolitan Board of Works (*m*).

Deposits on or before the 31st December.

Estimates, &c., in Private Bill Office.

42. On or before the 31st day of December, there shall be also deposited in the Private Bill Office all estimates, declarations and lists of owners, lessees and occupiers which are required by the Standing Orders of the House (*n*).

Documents to be deposited in Private Bill Office, in regard to Joint Stock Companies Bills.

43. As respects all bills for the incorporation of joint-stock companies, or proposed companies for carrying on any trade or business, or for conferring upon such companies the power of suing and being sued, there shall be deposited in the Private Bill Office, on or before the 31st December, a copy of the deed or agreement of partnership (if any) under which the company or proposed company is acting, and in all cases a declaration stating the following matters:—

1st. The present and proposed amount of the capital of the company.

2nd. The number of shares and the amount of each share.

3rd. The number of shares subscribed for.

4th. The amount of subscriptions paid up.

5th. The names, residences and descriptions of the shareholders or subscribers (so far as the same can be made out), and of the actual or provisional directors, treasurers, secretaries or other officer, if any.

And such documents shall be verified by the signature of some authorized officer of the company or proposed company (if any), and by some responsible party promoting the bill; and copies of such declarations shall be printed at the expense of the promoters of the bill, and delivered at the Vote Office for the use of the members of the House, and at the Private Bill Office for the use of any agent who may apply for the same (*o*).

(*h*) C. S. O. 36; L. S. O. clxxxii. 7.

(*i*) C. S. O. 37; L. S. O. clxxxii. 8.

(*j*) The necessary contents of this declaration are set forth in C. S. O. 39.

(*k*) C. S. O. 38. By L. S. O. cxcii. 2, a printed copy of the bill must be deposited in the office of the Clerk of the Parliaments on or before the 23rd day of December.

(*l*) C. S. O. 40.

(*m*) C. S. O. 41.

(*n*) C. S. O. 42. By L. S. O. clxxxii. 9, these must also be deposited in the office of the Clerk of the Parliaments.

(*o*) C. S. O. 43. The L. S. O. clxxvi. as to Joint Stock Companies, does not apply to railway companies.

44. On or before 31st December, copies of the estimate of expense of the undertaking; and where a declaration alone, or declaration and estimate of the probable amount of rates and duties are required, copies of such declaration, or of such declaration and estimate, shall be printed at the expense of the promoters of the bill, and delivered at the Vote Office for the use of the members of the House, and at the Private Bill Office for the use of any agent who may apply for the same (*p*).

Copies of estimate, declaration, &c., to be printed and delivered in Vote Office and Private Bill Office.

45. No deposit shall be deemed valid if made on a Sunday or Christmas-day, or before eight o'clock in the forenoon, or after eight o'clock in the afternoon of any day (*q*).

Deposit not valid on Sunday.

In the case of any bill for making any work, in the construction of which compulsory power is sought to take thirty houses or more inhabited by the labouring classes in any one parish or place, the promoters are required by the Lords' Standing Orders (*r*) to deposit in the office of the Clerk of the Parliaments, on or before the 31st day of December, a statement of the number, description and situation of the said houses; the number (so far as they can be estimated) of persons to be displaced, and whether any and what provision is made in the bill for remedying the inconvenience likely to arise from such displacement; and that such statement be referred to the committee on the bill, and that the said committee do inquire into and report thereon.

Statement relating to houses inhabited by the labouring classes to be deposited in the office of the Clerk of the Parliaments.

4. *Form in which Plans, Books of Reference, Sections, and Cross Sections shall be prepared.*

The Commons' Standing Orders, 46 to 58, describe with great particularity the form in which plans, books of reference, sections, and cross sections must be prepared, and there is a model plan annexed to the Standing Orders. It has been thought better not to incumber this work with these Orders, as any one preparing them cannot safely dispense with a copy of the last Standing Orders, by which he must be guided.

The corresponding Lords' Standing Orders are clxxxiii. 1—13.

5. *Estimates and Deposit of Money and Declarations in certain Cases.*

59. An estimate of the expense of the undertaking shall be made and signed by the person making the same (*s*). Estimate.

60. A sum not less than eight per cent. on the amount of the estimate of expense shall, previously to the 15th day of January, be deposited with the Court of Chancery in England, if the work is intended to be done in England, or with the Court of Chancery in England or the Court of Exchequer in Scotland, if such work is intended to be done in Scotland, and with the Court of Chancery in Ireland, if such work is intended to be done in Ireland (*t*).

Eight per cent. of estimate to be deposited.

(*p*) C. S. O. 44. The L. S. O. clxxxii. 10, requires these copies to be delivered at the office of the Clerk of the Parliaments.

(*q*) C. S. O. 45; L. S. O. clxxxii. 14.

(*r*) L. S. O. cxcii.

(*s*) C. S. O. 59; L. S. O. clxxxiv. 1. As to depositing this estimate in the Private Bill Office, C. S. O. 42, ante, p. 14; and in the office of the Clerk of the Parliaments, L. S. O. clxxxii. 9, ante, p. 14, note (*m*).

(*t*) C. S. O. 60. The L. S. O. clxxxiv. 2, is the same, except that in the case of

substituted works they require a deposit of eight per cent. on the amount, by which the expense thereof will exceed the expense of the works to be abandoned. The deposit need not be the actual property of the promoters, *Scott v. Oakley*, 10 L. T. (N. S.) 322. As to the custody of these monies, see 9 & 10 Vict. c. 20, Appendix, post. Since these orders were made, in 1858, both Houses have discontinued the requirement of subscription contracts.

Cases wherein declaration is deposited.

61. Where the work is to be made wholly or in part by means of funds, or out of money to be raised upon the credit of present surplus revenue belonging to any society or company, or under the control of directors, trustees or commissioners, as the case may be, of any existing public work; such parties being the promoters of the bill, a declaration stating those facts and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, and showing the actual surplus of such funds or revenue, after deducting the funds required for purposes authorized by any act or acts of Parliament, and also the funds which may be required for any other work to be executed under any bill in the same session, and given under the common seal of the society or company, or under the hand of some authorized officer of such directors, trustees or commissioners, may be deposited, and in such case no deposit of money shall be required in respect of so much of the estimate of expense, as shall be provided for by such surplus funds (*u*).

Cases wherein declaration and estimate of rates may be deposited.

62. In cases where the work is to be made out of money to be raised upon the security of the rates, duties or revenue, to be created by, or to arise under any bill under which no private or personal pecuniary profit or advantage is to be derived, a declaration stating those facts and setting forth the means by which funds are to be obtained for executing the work, and signed by the party or agent soliciting the bill, together with an estimate of the probable amount of such rates, duties or revenue, signed by the person making the same, may be deposited, and in such case no deposit of money shall be required (*x*).

Memorials complaining of non-compliance with Standing Orders.

When the time has expired for depositing the documents already specified, the parties interested can judge whether the Standing Orders have been complied with by the promoters, and if not, they may, if so disposed, take advantage of any mistakes by preparing memorials complaining of such non-compliance. But they cannot in such memorial go into the principle of the bill, as the examiners have no power to go into such questions (*y*). These memorials are addressed in the Commons, "To the Examiner of Petitions for Private Bills," and in the Lords, "To the Examiner of Standing Orders for Private Bills," and are prepared in the same form and subject to the same general rules as petitions to the House as well as to other special rules (*z*). Any parties are entitled to appear and be heard by themselves, their agents and witnesses upon a memorial; provided the matter complained of be specifically stated in the memorial, and the party (if any), who may be specially affected by the non-compliance with the Standing Orders, has signed the memorial and not withdrawn his signature thereto, and such memorial has been duly deposited in the Private Bill Office. [See Orders 191, 215, 216, 217 and 218] (*a*).

How addressed.

When to be deposited.

Memorials complaining of non-compliance with the Standing Orders of either House, applicable previously to the introduction of private bills, must be deposited in the Private Bill Office as follows (*b*):

If the same relate to bills numbered in the general list published by the Private Bill Office of the House of Commons,

From 1 to 100	} They must be deposited before 2 o'clock on	{	January 9th.
„ 101 to 200			„ 16th.
„ 201 and upwards			„ 23rd.

(*u*) C. S. O. 61. As to deposit of declaration in Private Bill Office, see C. S. O. 42, ante, p. 14.

(*x*) C. S. O. 62. As to deposit of declaration and estimate in Private Bill Office, see C. S. O. 42, ante, p. 14; L. S. O.

clxxxiv. 3.

(*y*) May, 681.

(*z*) May, 680.

(*a*) C. S. O. 72; L. S. O. cxci. 4.

(*b*) C. S. O. 215. Examiner's rules, 6th August, 1861, in App. to L. S. O.

And in the case of any petitions for bills which may be deposited by leave of the House after the 23rd December, such memorials must be deposited three clear days before the day first appointed for the examination of the petition.

These memorials must be deposited in the Private Bill Office before 6 P.M. of any day on which the House sits, and before 2 P.M. of any day on which the House does not sit, and two copies must be deposited for the use of the examiners before twelve o'clock on the following day (*b*).

In the House of Lords every such memorial must be deposited in the office of the Clerk of the Parliaments, together with two copies thereof, before twelve o'clock on the day preceding that appointed for the examination of the bill (*c*).

Proceedings before the Examiners.

The examination of petitions for private bills which have been duly deposited in the Private Bill Office (*d*), and private bills which have been duly deposited in the office of the Clerk of the Parliaments (*e*), commences on 18th January, in such order and subject to such regulations as shall have been made by Mr. Speaker (*f*). One of the examiners must give at least seven clear days' notice in the Private Bill Office of the day appointed for the examination of each petition (*g*), but practically much longer notice has been given (*h*). The clerks in the Private Bill Office prepare daily lists of all petitions upon which any examiner is appointed to sit, specifying the hour of meeting and the room where the examiner will sit, and the list is hung up in the lobby of the House (*i*).

Examination of petitions.

Notice.

Daily Lists.

These lists are divided into opposed and unopposed cases, the latter being first disposed of (*k*). If the promoters do not appear when their petition is called on, it is struck off the general list of petitions and cannot be re-inserted except by order of the House (*l*), made on petition; which will be referred to the Standing Orders Committee, who report to the House (*m*). If the promoters appear, they must prove compliance with the Standing Orders of both Houses of Parliament, which may be done by affidavit (*n*), unless the examiner requires further evidence. And, as we have already

(*b*) C. S. O. 216.

(*c*) L. S. O. cxvii.

(*d*) C. S. O. 69.

(*e*) L. S. O. cxliii.

(*f*) The last Speaker's regulations were made on 27th July, 1858, and may be found in Bristowe's Private Bill Practice, 2nd ed. p. 11.

(*g*) C. S. O. 70, 219.

(*h*) May 676, 5th ed.

(*i*) C. S. O. 237.

(*k*) May, 676.

(*l*) C. S. O. 70.

(*m*) C. S. O. 97.

(*n*) C. S. O. 74. This affidavit must be sworn in England before a Justice of the Peace; in Scotland, before any sheriff depute, or his substitute; in Ireland, before any judge, assistant barrister, or Justice of the Peace.

seen, any parties who have presented a memorial are entitled to appear and be heard.

Dissenting proprietors to be allowed to be heard.

73. In case any proprietor in any company shall by himself or any person authorized to act for him in that behalf, have dissented at any meeting called in pursuance of S. O. 66 or 67, such proprietor shall be permitted to be heard by the examiner of petitions, on the compliance with such Standing Order, by himself, his agents and witnesses, on a memorial addressed to the examiner, or by the committee on the proposed bill, by himself, his counsel, or agents and witnesses, on a petition presented to the House, such memorial or petition having been duly deposited in the Private Bill Office. [See Orders 124, 215 and 218] (*o*).

Statement of proofs.

A general statement of proofs will be required by the examiner and another copy by the committee clerk, comprising the Standing Orders of both Houses, and distinguishing any orders peculiar to either House by a reference to such orders in the margin. This general statement must be in the same form as the printed statement required for the House of Lords. There must also be a printed statement, in a form which may be obtained at the Queen's printers, of compliance with the Standing Orders of the House of Lords.

Examiner's certificate.

The examiner will certify by indorsement on the petition whether the Standing Orders have or have not been complied with (*p*). In the latter case he will report to the House the facts upon which his decision is founded and any special circumstances. If he feels doubts as to the due construction of any Standing Order, he will make a special report of the facts without deciding, and indorse the petition "Special Report," or "Special Report, Standing Orders not complied with," and send such special report with the certificate (*q*).

Standing Orders not complied with.

If the examiner reports that the Standing Orders have not been complied with, his report is referred to the select committee on Standing Orders (*r*), who report to the House whether such Standing Orders ought or ought not to be dispensed with, and whether the parties should be allowed to proceed with the bill, and under what (if any) conditions (*s*). If their report is unfavourable, the bill is lost, and the promoters must begin *de novo* next session. If the examiner make a special report, that likewise is referred to the select committee on Standing Orders (*t*), who determine whether the Standing Orders have been complied with or not, and report to the House, or consider the question of dispensing with Standing Orders (*u*).

Special report.

Dispensing with Standing Orders in Commons.

In the House of Commons petitions for dispensation with Standing Orders must be deposited at the Private Bill Office, and stand referred to the select committee on Standing Orders (*x*).

In Lords.

In the House of Lords, the party praying for such dispensation sets forth in a written statement the grounds on which he rests his

(*o*) C. S. O. 73.

(*p*) C. S. O. 75; L. S. O. cxci. 5.

(*q*) C. S. O. 77; L. S. O. cxci. 7.

(*r*) C. S. O. 184.

(*s*) C. S. O. 93; L. S. O. clxxviii. 3.

(*t*) C. S. O. 184.

(*u*) C. S. O. 95; L. S. O. clxxviii. 4.

(*x*) C. S. O. 185.

prayer, and the opposing party, the grounds on which he rests his opposition, both parties confining themselves strictly to the points reported on (*y*). These statements must be lodged in the office of the Clerk of the Parliaments, not later than five o'clock, on the day before the day on which the committee meets. If the committee think fit they hear the parties in explanation of their written statements (*z*). They then make a report whether or not the Standing Orders have been complied with, or if not, whether, in their opinion, they ought to be dispensed with (*a*).

When the examiner certifies that the Standing Orders have been complied with, and indorses the petition to that effect, it is returned to the agent, who arranges for its presentation to the House of Commons by a member. Copies of the bill must be laid before the Chairman of the Committee of Ways and Means and the counsel to the Speaker, not later than the day after the examiner has indorsed the petition for the bill (*b*); and two clear days at least before the day appointed for the consideration of the bill by a committee, there must be laid before the same officers by the agent, copies of the bill as proposed to be submitted to the committee, and such copies must be signed by the agent for the bill (*c*). It is the duty of these two officers to examine all private bills, whether opposed or not, and call the attention of the House, and also the chairman of the committee, on every opposed private bill, to all points which may appear to him to require it (*d*). The Chairman of the Committee of Ways and Means may also at any period after the bill has been referred to a committee, report to the House any special circumstances relative thereto which appear to him to require it, or inform the House that in his opinion it ought to be treated as an opposed bill, although unopposed (*e*), in which latter case it will be referred to the general committee on railway and canal bills (*f*).

With respect to the presentation of the petition for the bill, it is to be observed, that a bill is always entrusted to one or two members of the House, who attend at the sitting of the House, and make such motions as are necessary to forward its progress. The bill is brought into the House upon a petition, first presented and duly deposited in the Private Bill Office, and indorsed by the examiner, with a printed copy of the bill annexed, the petition being signed by some of the parties who are suitors for the bill (*g*). This petition for the bill must be presented on a day, not later than three clear days after

Standing Orders
complied with.

Copies of bill.

The petition for
the bill.

(*y*) L. S. O. clxxviii. 5.

(*z*) L. S. O. clxxviii. 6.

(*a*) L. S. O. clxxviii. 8.

(*b*) C. S. O. 79.

(*c*) C. S. O. 81.

(*d*) C. S. O. 79.

(*e*) C. S. O. 82.

(*f*) C. S. O. 194.

(*g*) C. S. O. 177.

indorsement by the examiner, or if the House shall not be sitting, then, not later than three clear days after the first sitting (*h*).

Bill presented.

When the bill is ordered to be brought in, it is presented to the House, by depositing it in the Private Bill Office, and is laid by one of the clerks of that office on the table of the House for first reading (*i*). But it cannot be read a first time unless it be presented not later than one clear day after the presentation of the petition for leave to bring in the bill, or when referred to the committee on Standing Orders, then, not later than one clear day after the House shall have given

Must be printed.

leave to the parties to proceed with the bill (*k*). The bill printed on paper, of a size determined on by the Speaker, must be presented to the House with a cover of parchment attached to it, upon which the title of the bill must be written and the short title of the bill as first entered on the votes, must correspond with that at the head of the advertisement (*l*). The proposed amount of all rates, tolls, and other matters, must be inserted in *italics* in the printed bill annexed to the petition (*m*). The bill must be printed, and printed copies delivered to the doorkeepers for the use of members before the first reading (*n*).

Copies.

Bill read first and second time.

The bill having passed the Standing Orders, is read a first and afterwards a second time, and then stands referred to the general committee on railway and canal bills (*o*). But there must not be less than three clear days, nor more than seven between the first and second reading, unless the bill has been referred to the examiners of petitions, in which case it must not be read a second time later than seven clear days after the reports of the examiner or the select committee on Standing Orders (*p*). And there must be eight clear days between the second reading of the bill and the sitting of the committee thereupon (*q*). Petitions in favour of or against the bill, or otherwise relating thereto (not being a petition for additional provision), must be presented to the House by depositing the same in the Private Bill Office, and there must be indorsed thereon the name or short title by which the bill is entered in the votes, and a statement that such petition is in favour of or against the bill, or otherwise, as the case may be, together with the name of the member, party or agent, depositing the same (*r*). All petitions against railway bills (*s*), and any report made under the authority of any public department, stand referred to the committee on the bill (*t*).

Interval between first and second reading.

Petitions for or against bill.

Petition against

- (*h*) C. S. O. 178.
- (*i*) C. S. O. 179.
- (*k*) C. S. O. 180.
- (*l*) C. S. O. 186.
- (*m*) C. S. O. 187.
- (*n*) C. S. O. 188.
- (*o*) C. S. O. 193.
- (*p*) C. S. O. 189.

- (*q*) C. S. O. 196.

(*r*) C. S. O. 190. Any petition may be withdrawn on a requisition to that effect being deposited in the Private Bill Office, signed by the petitioner, or the agent who deposited it. C. S. O. 191.

- (*s*) C. S. O. 195.
- (*t*) C. S. O. 197.

committee, which does not distinctly specify the ground on which the petitioners object to any of the provisions thereof, and the petitioners will only be heard on such grounds so stated; and if it appear to the committee that such grounds are not specified with sufficient accuracy the committee may direct that there be given in to the committee a more specific statement in writing, but limited to such grounds of objection so inaccurately specified (*u*). No petitioners will be heard before the committee unless their petition has been prepared and signed in strict conformity with the rules and orders of the House, and have been presented by having been deposited in the Private Bill Office not later than ten clear days after the first reading of the bill, except where the petitioners complain of any matter which may have arisen during the progress of the bill before the committee, or of any proposed additional provision, or of the amendments as proposed in the filled up bill deposited in the Private Bill Office (*x*).

bill must specify grounds of objection.

When to be presented.

All petitions for additional provision (which will not be received by the House unless a printed copy of the proposed clauses be annexed thereto) (*y*) are referred to the examiner of petitions (*z*), who must give at least two clear days' notice in the Private Bill Office of the day on which the same will be examined. And he must report to the House whether the Standing Orders have or have not been complied with, and, if not, the facts upon which his decision is founded, and any special circumstances connected with the case (*a*).

Petitions for additional provision.

The following Standing Orders show how the committee is to be appointed.

The committee on the bill.

3. There shall be a committee, to be designated "The Committee of Selection," to consist of the chairman of the select committee on Standing Orders, who shall be *ex officio* chairman thereof, and five other members who shall be nominated at the commencement of every session, of which committee three shall be a quorum (*b*).

Committee of selection.

4. There shall be a committee, to be designated "The General Committee on Railway and Canal Bills," which shall be nominated at the commencement of every session by the committee of selection; of which committee three shall be a quorum (*c*).

General committee on railway and canal bills.

5. The committee of selection may, from time to time, discharge members from further attendance on such general committee, and add other members in their room, and shall appoint the chairman of such committee (*d*).

Members may be varied.

6. The general committee on railway and canal bills shall appoint from among themselves the chairman of each committee on a railway or canal bill, or on a group of such bills, and may change the chairman so appointed from time to time (*e*).

General committee to appoint chairman.

7. The committee on every opposed railway and canal bill, or group of railway and canal bills, shall be composed of four members not locally or otherwise interested in the bill or bills referred to them, the chairman to be appointed by the general committee on railway and canal bills, and three other members by the committee of selection (*f*).

Committees on railway and canal bills.

(*u*) C. S. O. 123.

(*x*) C. S. O. 104, 124.

(*y*) C. S. O. 181.

(*z*) C. S. O. 182.

(*a*) C. S. O. 71, 219: L. S. O. cxciii. 6.

(*b*) C. S. O. 3.

(*c*) C. S. O. 4, 114.

(*d*) C. S. O. 5.

(*e*) C. S. O. 6.

(*f*) C. S. O. 7. See also C. S. O. 101. By C. S. O. 111, the committee of selection have the power of discharging any member or members of a committee and of substituting other members.

Each member of the committee, before he is entitled to attend and vote on the committee, must sign a declaration that his constituents have no local interest, and that he has no personal interest in the bill, and that he will never vote on any question without having duly heard and attended to the evidence relating thereto (*g*). No member of a committee shall absent himself from his duties thereon except in the case of sickness, or by order of the House (*h*). If a quorum is not present, proceedings are suspended (*i*). Absence of a quorum by death or otherwise is to be reported to the House (*h*).

Reference to
Chairman of
Ways and Means.

By a resolution of the House of Commons, made on 16th February, 1864, which, however, has not been made a Standing Order, the committee of selection and the general committee on railway and canal bills, at any time after the committal of bills, may, with the consent of all parties promoting and opposing, refer the same wholly or with reference to particular clauses to the Chairman of Ways and Means; and such chairman, together with members to be appointed in like manner as members of a committee on unopposed bills, are empowered to hear the parties promoting and opposing such bills, or their agents, and to report upon the same to the House.

And with regard to referees on private railway bills, the following Standing Orders were agreed to in 1864, though they will probably be modified or altered next session.

Referees on private bills to be constituted.

88. The Chairman of Ways and Means, with not less than three other persons, who shall be appointed by Mr. Speaker for such period as he shall think fit, shall be referees of the House on private bills; such referees to form one or more courts; three at least to be required to constitute each court; provided that the chairman of any second court shall be a member of this House; and provided that no such referee, if he be a member of this House, shall receive any salary.

Rules of practice and procedure to be made by Chairman of Ways and Means.

89. The practice and procedure of the referees, their times of sitting, order of business, and the forms and notices required in their proceedings, shall be prescribed by rules to be framed by the Chairman of Ways and Means, subject to alteration by him as occasion may require; but only one counsel shall appear before such referees in support of a private bill, or in support of any petition in opposition thereto. All such rules and alterations, when made, to be laid on the table of the House.

Jurisdiction of referees defined.

90. The referees shall inquire into all or any of the following matters, as to which parties petitioning against any bill desire to be heard in opposition, viz.:—

1. In the case of bills of the second class, for authorizing the construction of works (*l*), the engineering details of the undertaking, the efficiency of the works for the proposed object, and the sufficiency of the estimate for executing the same.

Referees to report to the House.

91. So soon as the inquiry into the matters referred to them upon any bill has been completed, the referees shall make their report upon the same to the House, stating the facts upon which their opinion is founded, and the report shall thereupon stand referred to the select committee on the bill. No further evidence shall be taken by the committee to prove or disprove any of the facts reported by the referees.

Committees on bills empowered to refer questions in special cases to referees.

92. The select committee to which any bill has been referred may, subject to the approval of the Chairman of Ways and Means, refer any question arising in the course of their inquiry which they may deem suitable to be so referred to the referees

(*g*) C. S. O. 113.

(*h*) C. S. O. 115.

(*i*) C. S. O. 117.

(*k*) C. S. O. 119.

(*l*) Which include railway bills.

for their decision; such question to be stated in writing and signed by the chairman of the committee. The referees, so soon as their inquiry has been completed, to return the question, with their decision certified thereon, to the chairman.

Various duties are imposed by the Standing Orders on the committee to which the bill may be referred. They are required to insist on the introduction of certain clauses in the bill, and also to report specially upon many points which are specially mentioned for their consideration.

The committee on the bill.

Thus, the Commons Standing Orders require that,—

145. In the case of a railway bill, no company shall be authorized to raise, by loan or mortgage, a larger sum than one-third of their capital; and, until fifty per cent. on the whole of the capital shall have been paid up, it shall not be in the power of the company to raise any money by loan or mortgage (*m*).

Standing Orders, 1865.

Restrictions as to mortgage.

146. Where the level of any road shall be altered in making any railway, the ascent of any turnpike road, or of any road in Ireland, so defined in the Railways Clauses Consolidation Act, 1845, shall not be more than one foot in thirty feet; and of any other public carriage road, not more than one foot in twenty feet; unless a report thereupon from some officer of the Board of Trade shall be laid before the committee on the bill, and unless the committee, after considering such report, if they shall disagree with the said report, shall recommend steeper ascents, with reasons and facts upon which their opinion is founded. Also, a good and sufficient fence, of four feet high at the least, shall be made on each side of every bridge which shall be erected (*n*).

Limiting ascent of roads where level is altered.

Fence to bridge.

147. No railway whereon carriages are propelled by steam, or by atmospheric agency, or drawn by ropes in connexion with a stationary steam-engine, shall be made across any turnpike road or other public carriage way on the level, unless a report thereupon from some officer of the Board of Trade shall be laid before the committee on the bill, and unless the committee, after considering such report, if they shall disagree with the said report, shall recommend such level crossing, with the reasons and facts upon which their opinion is founded (*o*), and in every clause authorizing a level crossing, the number of lines of rails authorized to be made at such crossing shall be specified.

Railway not to cross roads on a level, unless committee report, &c.

148. No railway company shall be authorized to construct or enlarge, purchase or take on lease, or otherwise appropriate, any dock, pier, harbour or ferry, or to acquire and use any steam-vessels for the conveyance of goods and passengers, or to apply any portion of their capital or revenue to other objects, distinct from the undertaking of a railway company, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded.

Railway company not to acquire docks, &c.

149. The committees on railway bills shall direct their attention especially to the following heads of inquiry, and shall require evidence from the promoters thereon, namely:—

Matters to be specially reported.

1. The financial arrangements made or proposed by the company formed for the execution of the railway; the number and amount of shares actually subscribed for or agreed to be taken; the amount of share capital and of loans proposed to be authorized.
2. The merits in an engineering point of view of the proposed railway, and the crossings, if any, of public roads on the level.
3. The degree of favour or objection with which the project is regarded by the landowners and others in the neighbourhood of the proposed railway.

Financial arrangements.

Engineering merits.

Opinions of landowners.

Every committee on a railway bill shall report specially to the House—

Matters to be specially reported.

Whether any report from any public department in regard to the bill, or the

Recommendations of public departments.

(*m*) This is the same as L. S. O. clxxxix. what differs from this.

7. (*o*) See L. S. O. clxxxix. 3, which is

(*n*) See L. S. O. clxxxix. 2, which some- similar, but not identical, thus far,

Standing Orders,
1865.

Level crossings.

Other circum-
stances.

Instruction to
committees on
railway bills.

Clause to be in-
serted imposing
penalty if line be
not opened.

Clause respecting
bond to be en-
tered into for
completion of
line.

objects thereof, has been referred by the House to the committee, and if so, in what manner the several recommendations contained in such report have been dealt with by the committee.

Whether it be intended that the railway shall cross on a level any turnpike road or highway.

And any other circumstances which in the opinion of the committee it is desirable that the House should be informed of.

150. It shall be an instruction to the committee on every railway bill providing for the construction of any new railway, or for the extension of time for the completion of any railway, in case they shall find the preamble thereof to be proved, to insert in the bill one or other of the provisions following, that is to say :—

In every railway bill promoted by an existing railway company, being possessed of a railway already opened for public traffic, whereby the construction of any new line of railway is authorized, or the time for completing any line already authorized is extended, a clause providing that after the expiration of a period to be limited by such bill, not exceeding five years from the passing of the act, in the case of a new line, and three years in case of the extension of time for completing any line, the company so making default shall be liable to a penalty of 50*l.* per day, to be recoverable as a debt due to the Crown, for every day after the period so limited, until such line shall be completed and opened for public traffic : but no penalty shall accrue in respect of any time during which it shall appear by a certificate, to be obtained from the Board of Trade, that the company was prevented from completing or opening such line by unforeseen accident, or circumstances beyond their control.

In every railway bill promoted by an existing railway company not being possessed of a railway already opened for public traffic, or by persons not already incorporated, whereby the construction of any new line of railway is authorized, a clause to the following effect, viz. :—

Whereas, pursuant to the Standing Orders of both Houses of Parliament, and to an act of the 9th and 10th years of her present Majesty, c. 20, a sum of £ , being eight per cent. upon the amount of the estimate in respect of the railway authorized by this act, has been deposited with the Court of Chancery in England [or with the Court of Exchequer in Scotland or the Court of Chancery in Ireland, *as the case may be*], [or exchequer bills, stocks or funds to the amount of £ have been deposited or transferred pursuant to the said act, *as the case may be*], in respect of the application to Parliament for this act: be it enacted, that, notwithstanding anything contained in the said recited act, the said sum of £ [or the said exchequer bills or other funds, *as the case may be*] so deposited [or transferred] as aforesaid in respect of the application for this act, or the interest or dividends of such sum of money [exchequer bills, stocks or funds], shall not, except upon the execution and deposit of such bond as hereinafter mentioned, be paid or transferred to or on the application of the person or persons, or the majority of the persons named in the warrant or order issued in pursuance of the said act, or the survivors or survivor of them, unless the said company shall previously to the expiration of the period limited by this act for completion of the railway hereby authorized to be made, either open the said railway for the public conveyance of passengers, or prove to the satisfaction of the lords of the committee of her Majesty's privy council for trade and foreign plantations that the said company have paid up one-half of the amount of the capital by this act authorized to be raised by means of shares, and have expended for the purposes of this act a sum equal in amount to such one-half of the said capital ; and if the said period shall expire before the said company shall either have opened the said railway for the public conveyance of passengers, or have given such proof as aforesaid to the satisfaction of the lords of the said committee, the said sum of money [exchequer bills, stocks or funds], deposited [or transferred] as aforesaid, and the interest and dividends thereof, shall immediately, from and after the expiration of the said period, be forfeited to her Majesty, and be paid and transferred by the officer or person in whose name they shall then be deposited or invested to the account of her Majesty's exchequer, and when so paid and transferred shall be carried to and form part of the Consolidated Fund of the United Kingdom of *Great Britain and Ireland* : provided that at any time after the passing of this act, if a bond in twice the amount of the said sum of £ shall have been executed by the said company, with one or more sureties (such bond to be prepared to the satisfaction of, and such surety or sureties to be approved by the solicitor to, the Lords Commissioners of her Majesty's Treasury), conditioned for payment to her Majesty, her heirs or successors, of the said sum of £ , if the said company

shall not, within the time limited for the completion of the said railway, either open the said railway for the public conveyance of passengers, or prove to the satisfaction of the lords of the said committee that the said company have paid up one-half of the amount of the said capital by this act authorized to be raised by means of shares, and have expended for the purposes of this act a sum equal in amount to such one-half of the said capital; and if such bond shall have been deposited with the said solicitor to the said lords commissioners, then such sum of money [exchequer bills, stocks or funds], and the interest or dividends thereof, shall be paid [or transferred] to or on the application of the person or persons, or the majority of the persons named in such warrant or order as aforesaid, or the survivors or survivor of them, and it shall not be necessary to produce any certificate of this act having passed, anything in the said recited act to the contrary notwithstanding; and the monies to be recovered upon such bond shall be dealt with in like manner as the said sum of money [exchequer bills, stocks or funds], and the interest or dividends thereof, would have been dealt with under this act if such bond had not been executed and deposited as aforesaid. And the certificate of the said solicitor to the said lords commissioners, that such bond has been executed and deposited as aforesaid, and the certificate of the lords of the said committee that such proof has been given to their satisfaction as aforesaid, shall respectively be sufficient evidence of the facts so certified.

*Standing Orders,
1865.
The committee
on the bill.*

In any railway bill to which the preceding provisions are not applicable, the committee shall make such other provision as they shall deem necessary for ensuring the completion of the line of railway.

*Provisions to be
made in special
cases.*

151. The committee on every railway bill shall fix the tolls, and shall determine the maximum rates of charge for the conveyance of passengers, with a due amount of luggage and of goods on such railway, and such rates of charge shall include the tolls and the costs of locomotive power, and every other expense connected with the conveyance of passengers, with a due amount of luggage and of goods upon such railway; but if the committee shall not deem it expedient to determine such maximum rates of charge, a special report, explanatory of the grounds of their omitting so to do, shall be made to the House, which special report shall accompany the report of the bill.

*Committee to fix
the tolls and
charges.*

152. In every railway bill by which it is proposed to authorize the company to grant any preference or priority in the payment of interest or dividends on any shares or stock, there shall be inserted a clause providing that the granting of such preference or priority shall not prejudice or affect any preference or priority in the payment of interest or dividends on any other shares or stock, which shall have been granted by the company in pursuance of, or which may have been confirmed by, any previous Act of Parliament, or which may otherwise be lawfully subsisting, unless the committee on the bill shall report that such provision ought not to be required, with the reasons on which their opinion is founded.

*Powers to grant
any preference in
payment of inter-
est, &c., not to
prejudice former
grants of pre-
ference.*

153. No railway company shall be authorized to alter the terms of any preference or priority of interest or dividend, which shall have been granted by such company in pursuance of, or which may have been confirmed by, any previous Act of Parliament, or which may otherwise be lawfully subsisting, unless the committee on the bill report that such alteration ought to be allowed, with the reasons on which their opinion is founded, together with the number of preference shareholders who have assented to or dissented from such alteration.

*Company not to
alter any prefer-
ence previously
granted.*

154. No powers of purchase, sale, lease or amalgamation shall be contained in any bill for the construction of a railway (p).

*No powers of pur-
chase, lease, &c.*

155. No powers of purchasing, hiring or providing steam vessels shall be contained in a bill by which any other powers are sought to be obtained by a railway company, except when the transit by such steam vessels is required to connect portions of railway belonging to or proposed to be constructed by such company.

*No powers of
purchasing, &c.,
steam vessels.*

156. No powers of purchase, sale, lease or amalgamation shall be given to any railway company with reference to any other undertaking already authorized by any act or acts, nor to any other incorporated company with reference to any railway, unless, previously to the application to Parliament for such purpose, the several companies, who may be parties to such purchase, sale, lease or amalgamation, shall have proved to the satisfaction of the Board of Trade, that they have respectively paid up one-half of the capital authorized to be raised by any previous act or acts, by means of shares, and have expended for the purposes of such act or

*No powers of pur-
chase, &c., to be
given, except
after proof of cer-
tain matters
before Board of
Trade, &c.*

(p) The same as L. S. O. clxxxix. 8.

Standing Orders,
1 65.

The committee
on the bill.

Company not to
guarantee in-
terest or dividend
before completion
of line.

Capital on amal-
gamation.

Additional capi-
tal of purchasing
company limited.

No interest to be
paid on calls.

Deposits not to
be paid out of
capital.

Railway not to be
exempt from any
general act.

Agreement to be
annexed to bill.

acts a sum equal thereto; and in case such powers shall be applied for in respect of works intended to be authorized by any bill or bills of the same session, it shall be proved to the satisfaction of the Board of Trade that such companies have respectively paid up one-half the amount of their capital, and that the company proposed to be empowered to construct such works have included in such amount the capital proposed to be authorized by such bill or bills; and that no such powers shall be given in respect of works intended to be authorized by any act or acts by which it is intended to apply in any subsequent session (*q*).

157. No railway company shall be authorized, except for the execution of its original line or lines sanctioned by Act of Parliament, to guarantee interest on any shares which it may issue for creating additional capital, or to guarantee any rent or dividend to any other railway company, until such first-mentioned company shall have completed and opened for traffic such original lines (*r*).

158. In bills for the amalgamation of railway companies, the amount of capital created by such amalgamation shall in no case exceed the sum of the capitals of the companies so amalgamated (*s*).

159. In bills for empowering any railway company to purchase any other railway, no addition shall be authorized to be made to the capital of the purchasing company, beyond the amount of the capital of the railway purchased; and in case such railway shall be purchased at a premium, no addition on account of such premium shall be made to the capital of the purchasing company (*t*).

160. A clause shall be inserted in every railway bill prohibiting the payment of any interest or dividend in respect of calls under such bill (except the interest by way of discount on subscriptions prepaid, agreeably to 8 & 9 Vict. c. 16, s. 24), out of any capital which they have been authorized to raise either by means of calls or of any power of borrowing (*u*).

161. A clause shall be inserted in every railway bill prohibiting any railway company from paying out of the capital, which they have been authorized to raise for the purposes of any existing act, the deposits required by the Standing Orders, to be made for the purposes of any application to Parliament for a bill for the construction of another railway (*x*).

162. The following clause shall be inserted in all railway bills passing through this House:—

And be it further enacted, that nothing herein contained shall be deemed or construed to exempt the railway by this or the said recited acts authorized to be made, from the provisions of any general act relating to railways now in force, or which may hereafter pass during this or any future session of Parliament, or from any future revision and alteration, under the authority of Parliament, of the maximum rates of fares and charges authorized by this act [or by the said recited acts].

163. Where it is sought by any bill to give parliamentary sanction to any agreement, such agreement shall be annexed to the bill as a schedule thereto, and shall be printed *in extenso* therewith.

Having thus pointed out the various rules laid down for the guidance of the committee, we may here remark that they have no power to examine into the compliance with any of the Standing Orders, which are directed to be proved before the examiners of petitions, unless by special order of the House (*y*). Neither have the committee any power to compel the appearance of witnesses before them, or the production of papers or records. Such evidence is usually procured by the promoters or opponents of the bill. It is usual, when the committee ascertain that such evidence cannot be procured without the interference of the House, to make a special report, and the House thereupon issues the necessary order (*z*).

(*q*) The same as L. S. O. clxxxix. 9.

(*r*) The same as L. S. O. clxxxix. 10.

(*s*) The same as L. S. O. clxxxix. 11.

(*t*) The same as L. S. O. clxxxix. 12.

(*u*) The same as L. S. O. clxxxix. 5.

(*x*) The same as L. S. O. clxxxix. 6.

(*y*) C. S. O. 133.

(*z*) May, 5th ed. 679.

When witnesses are produced, however, the committee may examine them upon oath (a). *The committee on the bill.*

They may also receive affidavits in proof of compliance with such Standing Orders as are directed to be proved before them (b).

On the day appointed for the meeting of the committee, the parties, their counsel and agents, are called into the committee-room, and the committee clerk reads a list of the petitions which have been presented against the bills of which the group is composed. No uniform rule is adopted by committees, as to the order in which the bills referred to them are considered. The general committee on railway and canal bills may form into groups all bills which in their opinion it may be expedient to submit to the same committee, and shall report the same to the House (c). They are also required to name the bill or bills which shall be taken into consideration on the first day of the meeting of each committee on any group of such bills (d), and the committee on each group must take such bill or bills first into consideration, and from time to time appoint the day on which they will enter upon the consideration of the remaining bills. Two clear days' notice of such appointment is given by the committee clerk to the clerks in the Private Bill Office, and the like notice of any postponement (e). *Order of proceeding in the committee-room.*

One of the questions which was usually much discussed before committees, was the *locus standi* of each of the various parties who petitioned against the bill to be heard by counsel against the preamble (f). The decisions on this point were very variable, but now the Standing Orders lay down the following rules:— *Proceedings before the committee in the Commons.*

87. The Chairman of Ways and Means shall decide upon all petitions as to the rights of the petitioners to be heard upon such petitions, without prejudice however to the power of the select committee, to which the bill is referred, to decide upon any question as to such rights arising incidentally in the course of their proceedings. *Chairman to decide as to rights of petitioners to be heard upon their petitions, &c.*

125. It shall be competent to the Chairman of Ways and Means to admit petitioners to be heard upon their petitions against a private bill, on the ground of competition, if he shall think fit. *Competition a ground of locus standi.*

(a) 21 & 22 Vict. c. 78, Appendix, post.

(b) C. S. O. 134. These affidavits must be sworn in the same way as affidavits to be used before the examiners, ante, p. 17, note (n).

(c) C. S. O. 100. Printed copies of the bill must be laid before the general committee by the parties prosecuting the same, at the first meeting of the committee. Ibid. 99.

(d) C. S. O. 103.

(e) C. S. O. 121. At the first meeting of the committee, copies of the bill as proposed to be submitted to them, and signed by the agent, must be laid by him before each member of the committee. Ibid. 130.

(f) On the subject of *locus standi*, with a collection of all the recent cases, see May,

5th ed. 731; also Frere's Practice, 32; Walford on Railways, Appendix, cccxvi.; Riddell's Railway Parliamentary Practice, 185. In *Stevens v. South Devon R. Co.*, 20 L. J. (Chan.), 491, Sir J. Romilly, M. R., said, "It was stated that if the application to Parliament were made by or in the name of the company, the plaintiff and other members of the company, alleging that they had an adverse interest, would not be allowed to appear in opposition to the bill. (Frere on Parliamentary Committees.) I own I have great difficulty in supposing that such is the course of proceeding in parliamentary committees; but it is said that some instances have occurred in which this has been done."

In what cases shareholders to be heard.

126. Where a bill is promoted by an incorporated company, shareholders of such company shall not be entitled to be heard before the committee against such bill, unless their interests, as affected thereby, shall be distinct from the general interests of such company (*g*).

In what cases railway companies to be heard.

127. Where a railway bill contains provisions for taking or using any part of the lands, railway, stations or accommodations of another company, or for running engines or carriages upon or across the same, or for granting other facilities, such company shall be entitled to be heard upon their petition against the preamble and clauses of such bill.

Municipal authorities and inhabitants of towns, &c.

128. It shall be competent to the Chairman of Ways and Means to admit petitioners, being the municipal or other authority having the local management of the metropolis or of any town, or the inhabitants of any town or district alleged to be injuriously affected by a bill, to be heard against such bill, if he shall think fit.

When opposed bills may be treated as unopposed.

129. In all cases of opposed private bills, in which no parties shall have appeared on the petitions against such bills, or having appeared shall have withdrawn their opposition before the evidence of the promoters shall have been commenced, the committees on such bills shall forthwith refer them back, with a statement of the facts, if railway and canal bills, to the general committee on railway and canal bills, who shall deal with them as unopposed bills.

Proceedings before the Committee in the Commons.

The committee having determined to proceed with one of the bills, the senior counsel for the bill opens the case, making particular reference to such provisions in the bill as are petitioned against; and, as the preamble to the bill is first considered, the observations are directed in support of the allegations contained in the preamble; but he is restricted to a statement of facts. Witnesses are also examined in support of the case which has been thus opened. This is also the period when evidence is adduced, to satisfy the committee, upon all the points upon which the committee are required to report specially to the House (*h*). The witnesses may be cross-examined by the counsel who appear in support of petitions against the preamble, but not by the counsel of parties who merely object to particular clauses in the bill (*i*). The witnesses may afterwards be re-examined in the usual manner; and when all the promoters' witnesses have been examined, then, if counsel are heard against the preamble, the senior counsel opens his case, and his witnesses are heard, cross-examined, and re-examined; and the counsel who appear for landowners, and other opponents, have the option of making their speeches either at the opening or close of their evidence. If the petitioner's counsel state facts, or call evidence, the counsel for the bill is entitled to a reply on the whole case; otherwise the counsel for the bill is not entitled to a general reply. He may, however, comment on any cases cited in the argument on the other side. The committee then proceed to affirm or deny that the preamble has been proved. If the decision is in the affirmative, they go through the bill, clause by clause,

(*g*) And see May, 736; and as to preference shareholders, May, 738.

(*h*) See these points particularly stated, ante, p. 23. As to the evidence necessary to show a compliance with the Standing Orders, see C. S. O. 134, 135.

(*i*) May, 5th ed. 730, et seq. It is not the practice to allow counsel to cross-examine who were not in the room when the witness was under the examination in chief. May, 741.

and fill up blanks, and parties who object to particular clauses or who propose amendments are heard. New clauses may also be proposed by the parties or members of the committee after all the clauses are gone through. It is at this time also that officers of public departments sometimes appear to secure the insertion of clauses protective of the property or interests of the Crown, or concerning the public interests (*k*). The committee may now also, as we have seen, refer questions in special cases to referees (*l*). The Standing Orders (*m*) point out the duties of the committee in recording their proceedings and reporting them to the House. When the committee have made their report, the report and the bill are by the Standing Orders ordered to lie upon the table (*n*). The bill must then be printed as amended in committee, and delivered to the doorkeepers for the use of members (*o*), to the Chairman of the Committee of Ways and Means and the Counsel to Mr. Speaker, and deposited at the office of the Board of Trade three clear days, at least, before the consideration of the bill (*p*). Three clear days must also intervene between the report and the consideration of the bill, and no consideration of the bill will take place unless the Chairman of the Committee of Ways and Means shall have informed the House or signified in writing to Mr. Speaker whether the bill contain the several provisions required by the Standing Orders (*q*). When it is proposed to bring up any clause or propose any amendment on the consideration of the bill, the same must be submitted by the agent to the Chairman of the Committee of Ways and Means, and the Counsel to Mr. Speaker, on the day on which notice is given thereof in the Private Bill Office (*r*), and the said chairman shall inform the House or signify in writing to Mr. Speaker whether such clause or amendment be such as ought or ought not to be entertained by the House, without referring the same to the Select Committee on Standing Orders (*s*).

Proceedings before the committee in the Commons.

Report of committee.

Clauses or amendments proposed;

When any clause or amendment is offered on the consideration of the bill, such clause or amendment must be printed at the expense of the parties, and when any clause is proposed to be amended it must be printed *in extenso*, with every addition or substitution in different type, and the omissions therefrom included in brackets and underlined (*t*). If such clause or amendment is referred to the select committee on Standing Orders, they will report to the House whether the clause or amendment should be adopted by the House or not, or

must be printed, &c.

(*k*) May, 742.

(*l*) C. S. O. 92, ante, p. 22.

(*m*) The chairman is required to mark certain documents, C. S. O. 139, 140, and to report to the House on certain points. *Ibid.* 141, 142, 143, 144.

(*n*) C. S. O. 198.

(*o*) C. S. O. 199.

(*p*) C. S. O. 83.

(*q*) C. S. O. 84, 200.

(*r*) Notice must be given at the Private Bill Office one clear day previous to the consideration of the bill. C. S. O. 231.

(*s*) C. S. O. 85, 201.

(*t*) C. S. O. 202.

Proceedings
before the com-
mittee in the
Commons.

Bill recommitted.

whether the bill should be recommitted (*u*). But no further proceeding can be had until their report is brought up (*x*). If the bill is recommitted it is referred to the former committee, and three clear days' notice must be given by the agents to the clerks in the Private Bill Office of the day and hour appointed for the meeting of the committee (*y*), and a filled up bill as proposed to be submitted to the committee on recommitment must be deposited in the Private Bill Office two clear days before the meeting of the committee, and a copy of the proposed amendments shall be furnished by the promoters to such parties petitioning against the bill as shall apply for it one clear day before the meeting of the committee (*z*). Amendments made on the consideration of the bill are entered by one of the clerks in the Private Bill Office upon the printed copy of the bill as amended in committee, which clerk signs the copy so amended and preserves it in the office (*a*). The bill is then ordered to be read a third time, of which one clear day's notice must be given by the agent to the clerks in the Private Bill Office; but no such notice shall be given until the day after that on which the bill was ordered to be read a third time (*b*). After it is read a third time, it is printed fair (*c*), examined by the clerks in the Private Bill Office with the bill as read a third time, certified by them (*d*), and sent to the Lords.

2. *Progress of the Bill through the Lords* (*e*).

Before proceeding to trace the bill through the Lords, it is necessary to call attention to the following important orders:—

Notices to be
given and de-
posits made in
cases where work
is altered while
bill is in Par-
liament.

That where any alteration shall have been made, or shall be desired by the parties to be made, in any railway bill brought from the Commons, after the introduction of the bill into Parliament, and the plans and sections for which shall have been deposited, and the notices for which shall have been given as before mentioned (*f*), a plan and section of such alteration on the same scale, and containing the same particulars, as the original plan and section, together with a book of reference thereto, shall be deposited with the clerk of the peace of every county, riding or division, in *England* or *Ireland*, and in the office of the sheriff clerk of every county in *Scotland*, and where any county in *Scotland* is divided into districts or divisions, then in the office of the principal sheriff clerk in and for each district or division in which such alteration is proposed to be made; and a copy of such plan and section, so far as relates to each parish, together with a book of reference thereto, shall be deposited with the parish clerks of each such parish in *England*, or, in the case of any extra-parochial place, with the parish clerk of some parish immediately adjoining thereto, with the schoolmaster of each such parish in *Scotland*, or, if there be no schoolmaster of any such parish, then with the session clerk, or in royal burghs with the town clerk, and the clerk of the union within which such parish in *Ireland* is included in which such alteration is intended to be made, *one month previously to the introduction of the bill into the House of Lords*; and the intention to make such alteration shall be

- (*u*) C. S. O. 98.
- (*x*) C. S. O. 203.
- (*y*) C. S. O. 224.
- (*z*) C. S. O. 225.
- (*a*) C. S. O. 233.
- (*b*) C. S. O. 232.
- (*c*) C. S. O. 206.
- (*d*) C. S. O. 234.

(*e*) Three printed copies of the bill must be lodged by the agent for the bill with the principal assistant committee clerk, on the morning of the day on which the bill is introduced into the Lords.

(*f*) Ante, p. 11. There are similar orders in the Commons, in the case of bills brought from the Lords. C. S. O. 64, 65.

published in manner before directed (g) in the *London, Edinburgh or Dublin Gazette*, as the case may be, and some one and the same newspaper of the county in which such alteration shall be situate, or if there be no such paper printed therein, then in the newspaper of some county adjoining thereto, for three successive weeks previously to the introduction of the bill into the Lords; and personal application with a notice in writing in the form hereinbefore mentioned (h), shall be made to the owners, or reputed owners, lessees, or reputed lessees, or, in their absence from the United Kingdom, to their agents respectively, and to the occupiers of lands through which any such alteration is intended to be made, and the consent of such owners, &c., to the making of such alteration must be proved before the Examiner (i).

Moreover, a map or plan and section of the railway, showing any variation, extension or enlargement which is intended to be made in consequence of such alteration, must be deposited in the office of the Clerk of the Parliaments; and such map or plan and section must be on the same scale, and contain the same particulars, as the original plan and section (j). A deposit will not be valid if made on a Sunday or Christmas-day, or before eight o'clock A.M., or after eight o'clock P.M., of any day (k).

If the bill is

To empower any company already constituted by Act of Parliament to execute, undertake or contribute towards any work other than that for which it was originally established, or to sell or lease their undertaking, or any part thereof, or to amalgamate the same or any part thereof with any other undertaking, or to abandon their undertaking or any part thereof, or to dissolve the said company, it will not be allowed to proceed in the Lords unless the Examiners shall have reported—

Deposit of altered plan and section in Parliament office.

Bill to be submitted to a meeting of proprietors in incorporated companies in certain cases.

1. That the bill as proposed to be introduced into the Lords was submitted to a meeting of the proprietors of such company, at a meeting held specially for that purpose.
2. That such meeting was called by advertisement inserted for two consecutive weeks in a morning newspaper, published in *London, Edinburgh or Dublin*, as the case may be, and in a newspaper of the county or counties in which the principal office or offices of the company is or are situate; and also by a circular addressed to each proprietor at his last known or usual address, and sent by post, or delivered at such address not less than ten days before the holding of such meeting, inclosing a blank form of proxy, with proper instructions for the use of the same, and the same form of proxy and the same instructions, and none other, shall be sent to every such proprietor; but no such form of proxy shall be stamped, nor shall the funds of the company be used for the stamping any proxies, except the company shall at a general meeting determine otherwise, in which case a stamped proxy shall be sent to each proprietor, with such instructions as aforesaid.
3. That such meeting was held on a period not earlier than seven days after the last insertion of such advertisement.
4. That at such meeting the said bill was submitted to the proprietors aforesaid then present, and approved of (l) by proprietors, present in person or by proxy, holding at least three-fourths of the paid-up capital of the company represented at such meeting, such proprietors being qualified to vote at the meeting in right of such capital (m).

(g) Ante, p. 10.

(h) Ante, p. 11.

(i) L. S. O. clxxxii. 12.

(j) L. S. O. clxxxii. 13.

(k) L. S. O. clxxxii. 14.

(l) Proprietors dissenting will be heard by the Examiner, on compliance with Standing Orders, on memorial deposited, with two copies, in the office of the Clerk

of the Parliaments before noon of the day preceding that appointed for the examination; or, on petition to the House, by the committee. L. S. O. cxc. 2.

(m) L. S. O. clxxxv. 1. This is known as the Wharnccliffe Order, and is the same as C. S. O. 66, except that that refers to bills sent from the Lords. A railway company cannot bind themselves by a covenant not

Consent of directors, &c., named in bill to be proved.

When the name of any person or persons is introduced into the bill, as manager, director, proprietor or otherwise concerned in carrying the bill into effect, proof will be required before the Examiner that such person or persons have subscribed their names to the petition for the bill or to a printed copy of the bill as brought up to the Lords (*n*).

Proof to be required before examiner of consent of proprietors of any company to sum authorized to be raised in aid of another company.

And when in the bill a provision is inserted authorizing the company to subscribe towards or to guarantee or to raise any money in aid of the undertaking of another company (which bill is not brought in by the company so authorized, or of which such company is not a joint promoter), proof will be required before the Examiner that the company so authorized has consented to such subscription, guarantee or raising of money at a meeting of the proprietors of the ordinary shares of such company held specially for that purpose in the same manner and subject to the same provisions as the meeting directed to be held under Standing Order clxxxv. 1; and that such consent was given by such proprietors, present in person or by proxy, holding at least three-fourths of the ordinary paid-up capital of the company represented at such meeting, such proprietors being qualified to vote at the meeting in right of such capital; and that the notices for the bill state the sum authorized to be subscribed, or guaranteed, or raised, and also state that the consent of the company has been given as aforesaid. In any case in which such consent has been given, it will not be necessary to submit the bill, in respect of such provision as aforesaid, to the approval of a meeting to be held in accordance with Standing Order clxxxv. 1 (*o*).

No petition necessary.

Let us now proceed to trace the bill through the House of Lords. It is not necessary to present to the House of Lords any petition for leave to bring in a railway bill sent up from the Commons (*p*).

By the practice of the House of Lords, copies of the bill as originally introduced, and also as proposed to be submitted to the committee on the bill in the Commons, are laid before the Chairman of the Lords' Committees and his Counsel, so that a simultaneous examination of the bill is proceeding in both Houses (*q*). This course enables the promoters to embody amendments suggested in the Lords before the bill has passed the Commons, and greatly facilitates the passage of the bill through the Lords.

to oppose a bill which, if passed, would deprive the shareholders of the protection afforded by this order. *Mansell v. Midland R. Co.*, 32 L. J. (Chan.), 513; 1 Hemm. & Mill. 130.

(*n*) L. S. O. clxxxv. 2. See C. S. O. 68. Under these orders it will be observed that the signatures only require to be proved in the *second* House.

(*o*) L. S. O. clxxxv. 3. This is the same as C. S. O. 67, except that that refers to bills sent from the Lords. C. S. O. 73, enables proprietors dissenting to be heard on memorial by the examiners on the compliance with Standing Orders, or by the committee on petition to the House.

(*p*) L. S. O. cxxxix.

(*q*) May, 5th ed. 708.

When the bill is introduced into the Lords, it is read a first time, First reading. and not later than two days after the bill is read a first time, a copy of the bill as brought into the Lords must be deposited at the office of the Board of Trade. Proof of compliance with this order is given by depositing a certificate from the said Board in the Private Bill Office (r).

Every railway bill brought from the Commons is after the first reading referred to the Examiners, before whom compliance with such Standing Orders as have not been previously inquired into must be proved. The Examiner must give at least two clear days' notice of the day on which the bill will be examined. Memorials complaining of non-compliance with Standing Orders must be deposited in the office of the Clerk of the Parliaments, with two copies thereof, before noon of the day preceding that appointed for the examination of the bill (s). After first reading, referred to examiner.

The Examiner reports to the Standing Orders Committee, as to whether or not the Standing Orders have been complied with, and makes a special report if necessary (t). The Standing Orders Committee (which is appointed at the commencement of every Session, and consists of forty Lords, besides the Chairman of Committees, who is always Chairman of Standing Orders Committee, three of whom are a quorum) reports to the House whether the Standing Orders ought or ought not to be dispensed with, and in the case of a special report of the Examiner, whether or not they have been complied with, or whether they should be dispensed with (u).

No petition praying to be heard upon the merits against any railway bill will be received by the House, unless the same be presented on or before the fifth day on which the House shall sit after the day on which such bill has been read a first time (x). Petitions against bill.

The bill will not be read a second time before the fifth day on which the House shall sit after the day on which the bill was read a first time (y). Nor will it be read a second time until printed copies are left with the Clerk of the Parliaments for the perusal of the Lords, and one of the said copies must be delivered to every person concerned in the bill before the meeting of the committee on the bill, and in case of infancy must be delivered to the guardian or next relation of full age not concerned in interest or in the passing of the bill (z). Second reading.

The second reading, as in the Commons, affirms the principle of the bill, subject to proof of the preamble before the committee, and is immediately followed by the commitment (a). If opposed, it is Commitment.

(r) L. S. O. clxxxii. 11.

(s) L. S. O. cxcvii.

(t) L. S. O. cxci. 5, 6.

(u) L. S. O. clxxviii., and see ib. as to proceedings before Standing Orders Com-

mittee.

(x) L. S. O. clxxix. 1.

(y) L. S. O. clxxix. 4.

(z) L. S. O. cxlv.

(a) May, 765.

referred to a select committee of five Lords. The proceedings before the committee are similar to those adopted in the Commons (*b*).

Duties of committee.

In addition to the general inquiries before the committee, they are ordered to observe that particular provisions are inserted for restricting loans or mortgages, for maintaining the levels of roads, and for restraining the crossing of roads on a level. They are also required to observe the same rules and introduce the same clauses and provisions as in the Commons, relative to the non-payment of interest on calls or deposits out of capital, and the financial arrangements of companies in cases of purchase and amalgamation (*c*). These provisions, however, being included in the bill as brought from the Commons (*d*), need not be further noticed here. It is also required that in every railway bill there be inserted a clause to enact:—

That the directors appointed by this act shall continue in office until the first ordinary meeting to be held after the passing of the act, and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by this act, or any number of them, or may elect a new body of directors or directors to supply the places of those not continued in office, the directors appointed by this act being eligible as members of such new body (*e*).

If any report made under the authority of the Commissioners of Railways upon the bill or the objects thereof is laid before the House, such report is referred to the committee on the bill (*f*).

Amendments in committee.

If any amendments have been made in committee, the bill must be reprinted as amended previously to the third reading, unless the Chairman of the Committee certify that the reprinting is unnecessary (*g*); and a copy of the bill as amended must be deposited in the office of the Board of Trade three days before the third reading. Proof of compliance with this order is given by depositing a certificate from the said Board in the Private Bill Office (*h*). No amendment can be moved on the report or on the third reading, unless the same has been submitted to the Chairman of Committees, and printed copies thereof deposited with the Clerk of the Parliaments, one clear day at least prior to the report or third reading (*i*).

Amendment on report on third reading.

The bill is now read a third time, and is ready to receive the Royal Assent.

- (*b*) Ante, p. 27.
- (*c*) L. S. O. clxxxix.
- (*d*) Ante, p. 26.
- (*e*) L. S. O. clxxxix. 4.

- (*f*) L. S. O. clxxxix. 13.
- (*g*) L. S. O. cxc. 1.
- (*h*) L. S. O. clxxxii. 11.
- (*i*) L. S. O. clxxix. 6.



3. *On the Taxation of Costs incurred in Parliament (k).*

Having thus traced the progress of a bill through Parliament, the present seems to be a fitting place to remark that the bills of costs of Parliamentary agents, attornies, solicitors and others, in respect of railway bills, and expenses incurred in complying with the Standing Orders in Parliament, and in preparing, bringing in, and carrying such bills through, or in opposing the same, in either House of Parliament, are subject to certain statutory regulations. The stat. 10 & 11 Vict. c. 69(*l*), regulates the taxation of such bills in the House of Commons, and the 12 & 13 Vict. c. 78(*m*), in the House of Lords. The following is a brief summary of the contents of these statutes, which repealed the former statutes relating to the taxation of costs in Parliament(*n*). Costs incurred in the House of Commons(*o*) or the House of Lords(*p*), cannot be recovered by action, until one month after a signed bill of costs has been sent or delivered to the party charged. But a judge may dispense with such month's notice, upon proof that the party charged is about to quit the United Kingdom. The Speaker of the House of Commons(*q*), and the Clerk of the Parliaments, or in his absence the Clerk Assistant of the House of Lords(*r*), appoint the taxing officers in the respective Houses(*s*).

Bill for costs incurred in parliamentary proceedings are subject to taxation.

The Speaker of the House of Commons(*t*), and the Clerk of the Parliaments, or his assistant, in the House of Lords(*u*), may from time to time prepare lists of charges to be allowed upon taxation of bills of costs in their respective Houses(*x*), and the taxing officer may exa-

(*k*) See Webster's Parliamentary Costs.

(*l*) Post, Appendix.

(*m*) Post, Appendix. Sections 10 to 13 of this act are applicable to costs in either House of Parliament.

(*n*) 6 Geo. 4, c. 123, in the Commons; 7 & 8 Geo. 4, c. 64, in the Lords.

(*o*) 10 & 11 Vict. c. 69, s. 2, post, Appendix.

(*p*) 12 & 13 Vict. c. 78, s. 2, post, Appendix.

(*q*) 10 & 11 Vict. c. 69, s. 3, post, Appendix.

(*r*) 12 & 13 Vict. c. 78, s. 3, post, Appendix.

pendix.

(*s*) As to whether Parliamentary costs may still be taxed by the taxing masters in equity, see *Re Ludlow*, 18 L. J. (Chan.) 182.

(*t*) 10 & 11 Vict. c. 69, s. 4 to 7, post, Appendix. By a resolution of 16th February, 1864, Mr. Speaker was requested to revise the list of charges for Parliamentary agents, solicitors and others, with a view especially to the reduction of the charges allowed for copies of documents.

(*u*) 12 & 13 Vict. c. 78, s. 4 to 7, post, Appendix.

(*x*) The following is—

A TABLE OF THE FEES TO BE CHARGED AT THE HOUSE OF COMMONS.*

FEES TO BE PAID BY THE PROMOTERS OF A PRIVATE BILL.

	£	s.	d.
On the deposit of the petition, bill, plan, or any other document in the Private Bill Office	5	0	0
For every day on which the examiners shall inquire into the compliance with the Standing Orders	5	0	0

* As to these fees, see post, p. 38, note (*f*). On the 27th July, 1864, it was ordered that this table of fees be a Standing Order of the House.

*Table of Fees in
the House of
Commons.*

mine parties and witnesses upon oath, and call for the production of books or writings in the hands of any party to such taxation, and the

<i>For Proceedings in the House.</i>						£	s.	d.
On the presentation of the petition for the bill	..	..	..	..	..	5	0	0
On the first reading of the bill	..	..	..	..	..	15	0	0
On the second reading of the bill	..	..	..	..	..	15	0	0
On the report from the committee on the bill	..	..	..	..	..	15	0	0
On the third reading of the bill	..	..	..	..	..	15	0	0

Bills from the Lords, commonly called Estate Bills, Divorce Bills, Naturalization Bills, and Name Bills, to be charged only one-half of the preceding fees.

The preceding fees on the petition, first, second, and third readings, and report, to be increased according to the money to be raised or expended under the authority of any bill for the execution of a work, in conformity with the following scale:—

If the sum be £100,000 and under £500,000, twice the amount of such fees.

" 500,000 " 1,000,000, three times "

" 1,000,000 and above, four times "

For Proceedings before any Committee, or the Referees.

For every day on which the committee or the referees shall sit,—	£	s.	d.
If the promoters of the bill appear by counsel	..	10	0
If they appear without counsel	..	5	0

FEES TO BE PAID BY THE OPPONENTS OF A PRIVATE BILL.

On the deposit of every memorial complaining that the Standing Orders have not been complied with	..	1	0	0
On the presentation or deposit of every petition against a private bill	..	2	0	0

For Proceedings before the Examiners or before any Committee, or the Referees.

For every day on which the examiners shall inquire into any memorial complaining of a non-compliance with the Standing Orders	..	3	0	0
For every day on which the petitioners appear before any committee, or the referees	..	2	0	0

GENERAL FEES.

On every motion, order, or proceeding in the House upon a private bill, petition, or matter not otherwise charged	..	1	0	0
For copies of all papers and documents, at the rate of 72 words in every folio,—				
If five folios or under	..	0	2	6
If above five folios, per folio	..	0	0	6
For the copy of a plan made by the parties	..	1	0	0
For the inspection of a plan, or of any document	..	0	5	0
For every plan or document certified by the Speaker pursuant to any Act of Parliament	..	10	0	0
For every day on which any parties shall be heard by counsel at the bar, from each side	..	10	0	0
For every day on which a committee of the whole House shall sit on a private bill or matter	..	6	0	0
For serving any summons or order on a private bill or matter	..	1	0	0
For riding charges, if on any private bill or matter, per mile	..	0	1	0
For every order for the commitment or discharge of any person	..	1	0	0
For taking any person into custody for a breach of privilege or contempt	..	5	0	0
For taking any person into custody for any other cause	..	2	0	0
For every day on which any person shall be in custody	..	1	0	0
For riding charges, per mile	..	0	0	6

FEES TO BE PAID ON THE TAXATION OF COSTS ON PRIVATE BILLS.

For every application or reference to "The Taxing Officer of the House of Commons" for the taxation of a bill of costs	..	1	0	0
For every £100 of any bill which shall be allowed by the taxing officer	..	1	0	0
On the deposit of every memorial complaining of a report to the taxing officer	..	1	0	0
For every certificate which shall be signed by the Speaker	..	1	0	0
For copies of any documents in the office of the taxing officer per folio of 72 words	..	0	1	0

That the same fees be paid in case the Speaker shall refer to the taxing officer any bill of costs, under the authority of an Act of the sixth year of his late Majesty King

taxing officer may also receive fees for his services, and award the costs of the taxation against either party thereto, as he may think fit.

*Mode of taxing
Costs incurred in
Parliamentary
Proceedings.*

Upon the application of any party, upon whom a demand of Parliamentary costs, incurred in the Commons (z), or in the Lords (a), has been made, or upon the application of the party sending in such demand of costs, the taxing officers, upon receiving a true copy of the bill, which shall have been duly delivered as aforesaid, shall proceed to tax and settle the same, and in the absence of either party they may proceed *ex parte*; and actions brought to recover the bill pending the taxation shall be stayed until the amount of the bill has been duly certified by the Speaker, or Clerk of the Parliaments, or Clerk's Assistant. But no application to tax can be entertained by the taxing officers, after a verdict has been obtained for the recovery of the bill of costs, or after the expiration of six months after the bill shall have been delivered: although in the latter case, upon a report of special circumstances, the taxing officer may be directed to tax the bill.

The taxing officer, on the direction of either party, is required to report to the Speaker of the Commons (b), or to the Clerk of the Parliaments, or his assistant, in the House of Lords (c), respecting the amount of the taxation and the costs thereof, and within twenty-one days either party may complain of the report, and the Speaker, or Clerk of the Parliaments, or his assistant, as the case may be, may require a further report from the taxing officer: and when the matters have been finally disposed of, a certificate is issued of the amount ascertained to be due, which is binding and conclusive on the parties, in all proceedings at law or in equity, or otherwise; and in any action or other proceeding brought for the recovery of the amount so certified, the certificate shall have the effect of a warrant of attorney to confess judgment; but it is provided that if the defendant in any action shall have pleaded that he is not liable to the payment of the

George IV., "To establish a Taxation of Costs on Private Bills in the House of Commons."

That every bill for the particular interest or benefit of any person or persons, whether the same be brought in upon petition, or motion, or report from a committee, or brought from the Lords, hath been and ought to be deemed a private bill within the meaning of the table of fees.

FEES TO BE TAKEN BY THE SHORT-HAND WRITER.

	£	s.	d.
For every day he shall attend	2	2	0
For the transcript of his notes per folio of 72 words	0	0	9

The preceding fees shall be charged, paid and received at such times, in such manner, and under such regulations, as the Speaker shall from time to time direct.

(z) 10 & 11 Vict. c. 69, s. 8, post, Appendix.

(a) 12 & 13 Vict. c. 78, s. 8, post, Appendix.

(b) 10 & 11 Vict. c. 69, s. 9, post, Appendix.

(c) 12 & 13 Vict. c. 78, s. 9, post, Appendix.

*Mode of taxing
Costs incurred in
Parliamentary
Proceedings.*

said costs, the certificate shall be conclusive as to the amount thereof which shall be payable by such defendant, only in case the plaintiff shall in such action recover the same (*d*).

If any bill of costs in either House of Parliament comprises any charges incurred in respect of a private bill, but not taxable by the act, in pursuance whereof such bill may come to be taxed, the taxing officer of the House of Lords, or of the House of Commons, as the case may be, may tax such costs himself, or request the taxing officer of the other House of Parliament, or the proper officer of any other court, to assist him in taxing any part of such bill; and the officer so requested to tax has the same power, and may receive the same fees, as upon a reference from the court of which he is such officer, and the report and certificate shall include the amount of such last-mentioned fees and expenses (*e*). And, lastly, the taxing master of either House of Parliament may take an account between the parties to any taxation of all sums of money paid or received in respect of any bill of costs, which is the subject of taxation (*f*).

(*d*) The object of this proviso is to enable parties charged with Parliamentary costs to deny their liability to pay them. See a similar provision in 6 & 7 Vict. c. 73, s. 43, where parties are allowed to dispute the retainer, after the costs have been taxed in the common law courts.

(*e*) 12 & 13 Vict. c. 78, ss. 10, 11, post, Appendix.

(*f*) Ibid. s. 12, post, Appendix. The Select Committee appointed for the revision of the Standing Orders relating to private bills, in their Report dated 24th July, 1862, abstained from suggesting any alteration in

the Schedule of Fees, from a conviction that it is desirable that it should be considered in conjunction with the scale of other Parliamentary charges, regulated under 10 & 11 Vict. c. 69, which latter did not come within the scope of the enquiry delegated to the committee. But they were strongly of opinion, that a reduction in some of the fees of the House and other charges paid in respect of private bills might be made, and should take effect as early as possible. They have been subsequently reduced, ante, p. 35. As to the other charges, see ante, p. 35, note (*t*).

CHAPTER III.

ON THE CONSTITUTION OF RAILWAY COMPANIES AND THEIR
POWERS.

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1. *Introductory Remarks.*

THE railways established in this kingdom are, for many purposes, public highways, like the ancient roads which they have almost superseded (a). Their origin is, however, different, for these modern roads have been formed by private enterprise alone (b), and their management is entrusted, by the legislature, to joint-stock companies, whose powers are derived from Acts of Parliament, obtained, as we have seen, for the purpose of establishing each particular line of railway (c). When the earliest railways were made, each Act was, like the old turnpike special acts, complete in itself, and contained the necessary

Railways are
public highways.

(a) *R. v. Severn and Wye R. Co.*, 2 B. & Ald. 646. See also post.

(b) But by 12 & 13 Vict. c. 62, half a million sterling was advanced by way of loan out of the consolidated fund to make the Midland Great Western Railway in Ireland.

(c) It appears by a return made to the House of Commons in July, 1862, by the several railway companies in England and Wales, Scotland and Ireland, that the total amount raised by shares and loans on 31st December, 1861, was the enormous sum of 362,327,338*l.*, or nearly half the amount of the national debt, and this exclusively of seventeen railway companies who had made no return. The number of miles open was 10,869½, so that the cost per mile was about 33,332*l.* Twenty years before, viz., in 1842, there were only 1,510 miles open. By the same return it appears that the following were the total traffic receipts for one year, ending 31st December, 1861:—

<i>England and Wales—</i>		£
Goods	12,775,456	
Passengers	11,246,472	
	<u>24,021,928</u>	
<i>Scotland—</i>		
Goods	1,923,313	
Passengers	1,172,121	
	<u>3,095,434</u>	
<i>Ireland—</i>		
Goods	540,111	
Passengers	907,882	
	<u>1,447,993</u>	

The gross traffic receipts for the United Kingdom for the week ending 1st October, 1864, amounted to 700,645*l.*, on 11,586 miles of railway.

Introductory Remarks.

The Consolidation Acts relating to railways in England and Ireland :
 8 & 9 Vict. c. 16;
 8 & 9 Vict. c. 18;
 8 & 9 Vict. c. 20;
 26 & 27 Vict. c. 92;
 26 & 27 Vict. c. 118. See also
 14 & 15 Vict. c. 70,
 and 23 & 24 Vict. c. 97, which
 relate to Ireland.

Usual Provisions in a Special Railway Act.

powers for making, maintaining and managing the particular railway. It was afterwards thought desirable that one code should, as far as it was practicable, be applicable to all such undertakings; and this was carried into effect by certain Acts of Parliament passed in 1845; and, as many of the earlier companies have been brought under this code, upon their subsequent applications for further powers from parliament, it may be said that the greater number of existing companies are subject to the provisions contained in these acts. They are three in number,—The Companies Clauses Consolidation Act; The Lands Clauses Consolidation Act; and the Railways Clauses Consolidation Act. Besides these Acts of Parliament, two additional acts of a similar nature were passed in 1863, called “The Companies Clauses Act, 1863,” and “The Railways Clauses Act, 1863.” As the titles of these various acts indicate, they relate to three principal objects (*d*);—1. The constitution of Railway Companies, and their powers. 2. The rights of shareholders and others, who invest the necessary capital, and thus enable the directors to carry on the business of the company. 3. The powers of the company—to take and purchase lands for the purpose of constructing the railway, and works connected therewith. It is, therefore, proposed to treat, in order, on these three subjects, reserving for separate consideration any other branches of our inquiry which may be deserving of notice.

But before we proceed with this investigation, it may be useful to give a summary of the contents of a Railway Act, as it is usually framed since the Consolidation Acts have come into operation.

Each particular railway act is called “the special act” (*e*). The special act, after reciting in the preamble, that the formation of the proposed railway would be of great public advantage, proceeds to incorporate the three Consolidation Acts of 1845 before referred to, save as to such parts thereof as may be modified by, or be inconsistent with, the provisions of the special act. The subscribers are then incorporated, by name, as *a body corporate* (*f*), with perpetual succession, with power to purchase and hold lands, within the restrictions therein and in the Consolidation Acts contained. The amount of the capital to be raised is then declared, and the mode of making the calls is prescribed. It is also provided that no shareholder of the company shall be liable for, or charged with, the payment of any debt or demand due from the company beyond the extent of his share in the

(*d*) The two first-named statutes are applicable to companies established for other public undertakings as well as railways. The 8 & 9 Vict. c. 17, is the Companies Clauses Act, and the 8 & 9 Vict. c. 19, the Lands Clauses Act, for Scotland.

(*e*) See 8 & 9 Vict. c. 16, s. 2, post,

Appendix. As to the object of railway acts, see *Clapham v. Magistrates of Edinburgh*, 10 Law T. (N. S.) 278.

(*f*) It is not necessary in pleading to state that the company is incorporated. *Woolf v. City Steam Boat Co.*, 7 C. B. 103; 19 Law J. (C. P.) 125; 13 Jur. 456.

capital of the company not then paid up; and limited powers are given to raise money on mortgage or on bond, provided a certain specified amount of the capital be subscribed and paid up (*g*). The number of directors is prescribed, and sometimes a power of removal for misconduct is given. The company are empowered, by exercising the powers in the statute, to make and maintain the railway and works, on the lands delineated and described in the parliamentary plans and book of reference, and the line of the railway is pointed out. Any special provisions are then inserted. The quantity of land which may be taken for extraordinary purposes is defined, and also the period within which lands are to be purchased, and a certain time is prescribed for the completion of the railway. The tolls which may be taken are also particularly specified, and a maximum rate of charges, for passengers and goods, is inserted. A power enabling the company to lease or sell the railway is sometimes added; and it is specially provided, that the provisions of all existing or future general railway acts shall be in force in respect to the railway and company.

*Usual Provisions
in a Special Rail-
way Act.*

As soon as the special act is obtained, all the powers which the railway company previously enjoyed, by reason of registration, cease and determine, except so far as may be otherwise provided by the special act; and the money deposited in the Bank of England, in pursuance of the Standing Orders in Parliament (*h*), may now be withdrawn, on the petition of the parties in whose name the money is standing (*i*), subject, nevertheless, to the provisions contained in Standing Order No. 150, which, it will be observed, applies to Ireland as well as to the United Kingdom (*j*).

2. Meetings of Shareholders.

We shall presently see that the management and superintendence of the affairs of a railway company are intrusted to a board of directors; but as these officers are always elected by a vote of the shareholders, who may also, by holding an extraordinary meeting, control

Meetings of shareholders, ordinary and extraordinary.

(*g*) See ante, 24. In the session 1853, the following order was made in the Commons, "That all railway bills introduced into this House during the present session, as a general rule, be made integral in themselves, and that the greatest caution be exercised in admitting into them, otherwise than by specific enactment, provisions which repeal, continue, or extend the powers of former acts; and that the attention of committees on private bills be directed to this point."

(*h*) Ante, p. 15.

(*i*) See 9 & 10 Vict. c. 20, post, Ap-

pendix. The petition is presented to the Court of Chancery, and the Court will order payment to be made to the bankers of the company, if such be the prayer of the petition. *Ex parte Warwick and Leamington R. Co.*, 13 Sim. 31. Injunctions are sometimes granted to restrain parties from obtaining these deposits. See *Castendieck v. De Burgh*, 15 Law J. (Chan.) 425; *Gilbert v. Cooper*, 10 Jurist (Chan.) 580; *Lewis v. Cooper*, *ibid.* 602; *Goodman v. De Beauvoir*, *ibid.* 938.

(*j*) Ante, 24.

Meetings of shareholders, ordinary and extraordinary.

and regulate their proceedings, we shall first consider the mode in which the meetings of shareholders are required to be held.

The Companies Clauses Consolidation Act, 8 & 9 Vict. c. 16, which is printed at length in the Appendix, provides that two meetings of shareholders, called "ordinary meetings," shall be held every year: (Sect. 66 (*k*).) And no matters, except such as are appointed to be done at an ordinary meeting, shall be transacted, unless special notice of such matters have been given in the advertisement convening such meeting: (Sect. 67.) Every general meeting of shareholders other than an ordinary meeting, is called "an extraordinary meeting," and may be convened by the directors as they think fit: (Sect. 68.) But only such business as was mentioned in the notice which convened the meeting can be entered upon: (Sect. 69.) A certain number of shareholders (*l*) may also require an extraordinary meeting to be held, by sending a requisition to the directors, who are thereupon required to convene the meeting; or on their default, the requisitionists may call such meeting: (Sect. 70.) Fourteen days' (*m*) public notice, at the least, of all meetings, ordinary and extraordinary, must be given in the form prescribed; and every notice of an extraordinary meeting, or of certain ordinary meetings particularly mentioned, must specify the purpose for which such meeting is called (*n*): (Sect. 71.) All notices required by that or the special act to be given by advertisement shall be advertised in the prescribed newspaper, or, if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the company's principal place of business shall be situated (*o*): (Sect. 138.) To consti-

Notice of meetings.

(*k*) The Consolidation Acts, which form the basis of this and following chapters of this work, are necessarily abbreviated, and much labour has been devoted to the preparation of an accurate analysis of their contents. But, reminding readers of Lord Coke's maxim, "*Melius est petere fontes quam sectari rivulos*,"—the author has in every case given a reference to the statute itself, which is to be found in the Appendix.

(*l*) If, from any circumstances, an exact compliance with the terms of the statute is impossible, it seems that these and similar provisions will be considered as directory only, see *Foss v. Harbottle*, 2 Hare, 496. It has been decided under the Benefit Building Society Act (6 & 7 Will. 4, c. 32), that a meeting may be both general and special;—general for the purpose of doing general business, and special for a particular purpose. *Cutbill v. Kingdom*, 1 Exch. 504.

(*m*) This means "fourteen clear days." *R. v. J. of Shropshire*, 8 A. & E. 173; *R. v. Aberdare Canal Co.*, 14 Q. B. 854; see also

Adey v. Hill, 4 C. B. 38.

(*n*) *Wills v. Murray*, 4 Exch. 843; 19 Law J. (Exch.) 209; *S. C.* 5 Exch. 713, and post, 47, note (*c*).

(*o*) The directions contained in this and the 71st section must be strictly observed, or every act done at the meeting will be a nullity. *Ex parte Lawes*, 21 Law J. (Chan.) 688; 16 Jur. 343. Where the place of business of a company was at Swansea, a notice was on the 5th of October inserted in the third edition of the "Sun" newspaper published in London on that day, and subsequently published in other newspapers, calling a meeting of the company in London on the 20th October. The "Sun" newspaper did not circulate in Swansea, nor was any copy of the third edition sent there, and it was decided that the meeting held in pursuance of the advertisement was invalid. *Swansea Dock Co. v. Levien*, 20 Law J. (Exch.) 447. How notices may be given to shareholders, see 8 & 9 Vict. c. 16, ss. 136, 137, post, Appendix.

tute a meeting (whether ordinary or extraordinary) there must be present, personally or by proxy, the prescribed quorum; and if no quorum be prescribed in the special act, then shareholders holding, in the aggregate, not less than one-twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders, holding not less than one-twentieth of the capital of the company, shall be the quorum. And if, within one hour, the quorum be not present, no business, except declaring a dividend, can be transacted, and such meeting must (except it be to appoint directors) be held to be adjourned *sine die*: (Sect. 72.) The act provides for the appointment of the chairman at all meetings: (Sect. 73.) The shareholders at any meeting can proceed only with respect to the matters for which the meeting was convened, and such meeting may be adjourned: (Sect. 74.)

Meetings of shareholders, ordinary and extraordinary.

At all general meetings, every shareholder may vote according to the prescribed scale of voting; and if no scale shall be prescribed by the special act, every shareholder has one vote for every share up to ten, and an additional vote for every five shares, beyond the first ten shares, and an additional vote for every ten shares held by him, beyond the first hundred shares, if he has paid up all calls on the shares held by him: (Sect. 75.) Votes may be given personally, or by proxies, being shareholders, and a form of proxy is given in the act (p). The chairman of the meeting has a casting-vote, if there be an equality of votes: (Sect. 76.) Instruments (q) appointing a proxy

Scale of voting, and voting by proxies.

(p) See post, 45, note (r). The following is the form of the proxy; see 8 & 9 Vict. c. 16, Schedule (F.) post, App.:—

Form of Proxy.

A. B., —, one of the proprietors of "the — company," doth hereby appoint C. D., of —, to be the proxy of the said A. B., in his absence to vote in his name upon any matter relating to the undertaking proposed at the meeting of the proprietors of the said company to be held on the — day of — next, in such manner as he the said C. D. doth think proper. In witness whereof the said A. B. hath hereunto set his hand [or, if a corporation, say, "the common seal of the corporation"] the — day of —, one thousand eight hundred and —.

A. B.

(q) These instruments are liable to a stamp duty. By 27 & 28 Vict. c. 18, s. 1, in lieu of the duties then payable, new duties were imposed, that is to say (Schedule C.), for and upon any letter or power of attorney, commission, factory, mandate or

other instrument in the nature thereof, for the sole purpose of appointing, nominating or authorizing any person to vote as a proxy, or otherwise at one meeting of the proprietors or shareholders of any joint-stock or other company, or of the members of any society or institution, or of the contributors to the funds thereof, or at one meeting of any body exercising a public trust in the United Kingdom: 1d. *Voting Paper*,—that is to say, any instrument for the purpose of voting by any person entitled to vote at any such meeting as aforesaid in any part of the United Kingdom: 1d. By 7 & 8 Vict. c. 21, s. 6, any letter or power of attorney, or other instrument made for the purpose of appointing or nominating a proxy, and chargeable with duty under that act, shall authorize such proxy to vote upon any matter at one meeting of the proprietors or shareholders of or in any company or society, the time of holding whereof shall be specified in such instrument, or at any adjournment of such meeting; and no such letter or power of attorney, or other instrument, shall be further or otherwise available. By s. 7, it shall not be lawful for

Meetings of shareholders, ordinary and extraordinary.

must be transmitted to the secretary before the prescribed period, and, if no period be prescribed, forty-eight hours before the meeting is held: (8 & 9 Vict. c. 16, s. 77.) If shares are held jointly, the person whose name stands first in the register of shareholders is entitled to vote: (Sect. 78.) The committee of lunatics and the guardians of minors may vote: (Sect. 79.) Whenever a particular majority of votes is required, such majority need only be proved in the event of a poll: in other cases a declaration of the chairman and an entry made in the book of proceedings is sufficient: (Sect. 80.)

We now proceed to show how the Board of Directors is constituted.

3. *The Appointment of Directors, and their Meetings.*

The appointment of directors.

The special act always names the first Board of Directors, and prescribes the number which shall be from time to time appointed by the shareholders: and sometimes the shareholders are authorized to increase or reduce the number of directors. The Companies Clauses Consolidation Act (8 & 9 Vict. c. 16, which is printed at length in the Appendix) contains the following provisions as to the appointment of directors.

The number must be the prescribed number: (Sect. 81.) But they may be increased or reduced, at a general meeting of the company, if the special act authorizes such a proceeding: (Sect. 82.) The directors appointed by the special act (unless thereby otherwise

the commissioners to stamp after the signing thereof by any person, any vellum or paper upon which any letter or power of attorney, or other instrument appointing or nominating a proxy chargeable with duty under this act, shall be ingrossed, written, or printed; and if any person shall make or sign any such letter or power of attorney, or other instrument as aforesaid, which shall be ingrossed, written or printed, or partly ingrossed or written and partly printed, upon vellum, parchment, or paper not duly stamped according to law, or if any person shall vote or attempt to vote, or act as a proxy in pursuance or under the authority or pretended authority of any such letter or power of attorney, or other instrument, not duly stamped as aforesaid, every person so offending in any or either of the cases aforesaid shall forfeit and pay the sum of 50*l.*; and every vote made or given, or other act done in pursuance, or under the authority, or pretended authority, of any such letter or power of attorney, or other instrument *not duly stamped* as aforesaid, shall be *absolutely null and void* to all intents and purposes.

By 24 & 25 Vict. c. 91, s. 27, it is pro-

vided that the stamp on a proxy "may be denoted by an adhesive stamp to be provided by the Commissioners of Inland Revenue, and affixed to the instrument and cancelled by the person signing the instrument, by writing his *name* or the *initials* thereof upon or across the stamp, together with the date of the day of the meeting for voting at which the instrument is made; but nothing herein contained shall relieve any person from the penalty incurred by making or signing any such instrument on paper not duly stamped, or by voting or attempting to vote under the authority thereof, unless there shall be affixed thereto and cancelled as aforesaid the proper adhesive stamp." And there is a similar provision with regard to voting papers. 27 & 28 Vict. c. 18, s. 14.

A general proxy to vote at all meetings would not be valid. In *Trinity House of Hull v. Beedle*, 13 Q. B. 175; 18 Law J. (Q. B.) 78, a general proxy was held to be valid when stamped with a 3*s.* stamp (see Tilsley on the Stamp Act, 60); but the statute, in that case, contained an express authority to vote, by proxy, "at all meetings" of the company.

provided) continue in office until the first ordinary meeting in the year next after the special act shall be passed: at that meeting the shareholders elect the directors, the directors appointed by the special act being eligible to be re-appointed. At the first ordinary meeting, held every year afterwards, the places of retiring directors are in like manner supplied: (Sect. 83 (r).) If, at any meeting for the election of directors, the prescribed quorum of shareholders be not present, the meeting stands adjourned to the following day; and if, at the adjourned meeting, such prescribed quorum be not present, the existing directors continue in office till the first ordinary meeting of the following year: (Sect. 84.) A director must be a shareholder, and hold the prescribed number (if any) of shares; and he may not hold or accept any office or place of trust or profit under the company, or be interested in any contract(s): (Sect. 85.) If he does, or if, in any manner, he participates in the profits of any work to be done for the company, or ceases to hold shares in the company (t), he ceases to be a director, and his place is declared vacant: (Sect. 86.) But the disqualification as to contracts does not extend to contracts made with an incorporated joint-stock company, of which the director is a member; nevertheless such director cannot vote on any question of contract with such joint-stock company: (Sect. 87.) The directors retire from office at the times and in the proportions prescribed in the special act: and if no number be prescribed, one-third at the end of the first year, one other third the second year, and the remaining third the third year, the rotation being determined by ballot: but retiring directors are eligible to be re-elected: (Sect. 88.) If a director dies, resigns, becomes dis-

The appointment
of directors.

Mode of voting
for directors.

Disqualification
of directors.

(r) The proper mode of voting seems to be, that every shareholder should vote for a list of the whole number of persons he intends to vote for—not exceeding of course the number to be elected. It has been decided that when a certain number of persons are to be elected as an official body, this principle is the only one that can be reasonably acted upon. The point on which the voter exercises his judgment is not whether A. would be a good director to fill one of the vacancies, but whether A. and others would form a good board. See *R. v. Brightwell*, 10 A. & E. 171. The right to demand a poll is by the common law an incident to the popular election of a person to an office, *Campbell v. Maund*, 5 A. & E. 880; and the poll must be kept open a reasonable time. In 8 & 9 Vict. c. 16, s. 80, it is assumed that this common law right may be exercised, and see post, 47, note (c). See also *R. v. Hillingdon*, 18 Q. B. 718.

(s) If a director contravenes this provision, the contract is not thereby annulled,

but the office of director is vacated. *Foster v. Oxford R. Co.*, Weekly Reporter, 1852-3, p. 151; 17 Jur. 167; 22 L. J. (C. P.) 99; 13 C. B. 200. See also *Aberdeen R. Co. v. Blakie*, 23 Law Times, 315. The section applies only to contracts made with the company in the execution of its enterprise. *Sheffield and Manchester R. Co. v. Woodcock*, 7 Mee. & W. 574, where it was held, that directors, who were members of a banking company, might act as bankers to the company.

(t) Bankrupts and insolvents are therefore disqualified, if the assignees elect to take the shares, *Phelps v. Lyle*, 10 A. & E. 113; but otherwise not, *South Staffordshire R. Co. v. Burnside*, 5 Exch. 129. See also *Wylam's Steam Fuel Co. v. Strut*, 10 Exch. 849, and *Graham v. Van Diemen's Land Co.*, 26 L. J. (Exch.) 73. It seems that if a shareholder makes an equitable mortgage of his shares, that does not disqualify him. Per Lord Abinger, C. B., in *Cumming v. Prescott*, 3 Y. & Col. 488.

The appointment
of directors.

qualified or incompetent (*u*), or ceases to be a director by any other cause than by going out by rotation, the remaining directors may elect a shareholder to supply his place: (8 & 9 Vict. c. 16, s. 89.)

Vacancies in the
direction.

If the shareholders neglect to elect the full number of directors, which the special act requires to manage the affairs of the company, it seems that a mandamus would lie to compel an election (*x*); but, with respect to the occasional vacancies occasioned by any other cause than by going out of office by rotation, it is in the option of the remaining directors, whether they will fill up such vacancies or not. Where a railway act provided that the business of the company should be carried on under the management of twelve directors, to be chosen from among the proprietors holding ten shares each; and that, when and so often as any director should die or resign, or become disqualified or incompetent to act as a director, it should be lawful for the remaining directors to elect some other proprietor duly qualified in his place: the Court of Common Pleas decided that the act of Parliament did not require that there should be always twelve directors of the company, and that the power of re-election, given in cases of death or other disqualification, was not compulsory upon the remaining directors. If the directors were of opinion that their number was not sufficient to enable them to carry on the affairs of the company, they might elect others; but upon this point they were entitled to exercise an option (*y*). All acts done by a director, notwithstanding it was afterwards discovered that there was some defect in the appointment, or that he was disqualified, are declared to be as valid as if he had been duly appointed and qualified (8 & 9 Vict. c. 16, s. 99).

On the trial of actions to recover calls on shares, it is expressly provided, that it shall not be necessary to prove the appointment of the directors who made the call (sect. 27); and this also excludes a defendant from objecting to the authority of directors to institute proceedings, by making a summary application to the court in which the action is brought (*z*). It has also been decided, that, if there be a body of directors acting *de facto*, their acts may be valid, although the persons acting may not have been duly qualified (*a*). If a body of persons assume to act as directors without authority, the proper remedy seems to be to apply to the Court of Queen's Bench for a quo

(*u*) It seems that a director may become incompetent by misconduct, as by absconding from his creditors. *Wilson v. Wilson*, 6 Scott, 340. When a court of equity will review the decision of a body of shareholders, who have decided on a question, as to the incompetency of one of its officers, see *Inderwick v. Snell*, 2 Hall & Twells, 412; 19 Law J. (Chan.) 542; 2 M.N. & Gord. 216.

(*x*) *Thames Haven Dock Co. v. Rose*, 4 Man. & G. 559; 2 Dowl. N.S. 104; *Moxley v. Alston*, 1 Phil. 790; 16 Law J. (Chan.) 216; 4 Railw. C. 636.

(*y*) *Thames Haven Dock Co. v. Rose*, *ubi supra*.

(*z*) *Thames Haven R. Co. v. Hall*, 5 Man. & G. 274; S. C. 3 Railw. C. 441.

(*a*) *Foss v. Harbottle*, 2 Hare, 461. See 8 & 9 Vict. c. 16, s. 99, post, Appendix.

warranto. In a case of this kind, Lord Cottenham, C., declined to interfere, on the ground that it involved matters purely of law (*b*).

Vacancies in the direction.

The directors hold meetings as they shall appoint, and any two directors may call a meeting (*c*); and to constitute a meeting, a quorum must be present, consisting, if not otherwise prescribed in the special act, of one-third of the directors (*d*); and questions are decided by a majority of votes, and the chairman is entitled to a casting vote: (8 & 9 Vict. c. 16, s. 92.) A chairman and deputy chairman of directors may be elected annually; and any vacancy happening during the year must be filled up: (Sect. 93.) In the absence of both, at a meeting of directors, a temporary chairman is to be chosen: (Sect. 94.) The directors may appoint one or more committees, and entrust them with power to do acts relating to the affairs of the company, which the directors could lawfully do, and which they shall think proper to entrust to them (*e*): (Sect. 95.) The committees must exercise their powers at a meeting, at which a quorum must be present, and their chairman has a casting-vote: (Sect. 96.)

Meetings of directors.

Appointment of committees.

(*b*) *Mozley v. Alston*, 1 Phil. 790; 16 Law J. (Chan.) 217.

(*c*) Where a body of persons are charged with the performance of any specified duties, it is not lawful to hold a meeting, unless due legal notice thereof be given to each of the members. It seems therefore to be important that every meeting of directors should be duly convened; otherwise their proceedings may be questioned. See the concluding part of section 98, 8 & 9 Vict. c. 16, post, Appendix. In *Roberts v. Price*, 4 C. B. 231, the election of a treasurer to a friendly society, vested in a committee of eleven persons, was held to be void, in consequence of an omission to give notice of the meeting to one of the committee, although the absent committeeman had for a considerable period ceased to attend the meetings, and had previously intimated an intention not to attend any more. In *Smyth v. Darley*, 2 H. L. C. 803, where the question was, if it was necessary that the Recorder of Dublin should have been summoned to the election of a freeman to the corporation—the rule is thus laid down: “The election being by a definite body on a day of which, till summons, the electors had no notice, they were all entitled to be specially summoned, and, if there was any omission to summon any of them, unless they all happened to be present, or unless those not summoned were beyond summoning distance, as for instance abroad, there could not be a good electoral assembly; and even an unanimous election by those who did attend would be void.” So in a case where certain directors nominated by a class of shareholders in the

company, had been excluded at a meeting of the board, and it was contended at the bar, that that course of proceeding was strictly within the letter of the law, Sir J. Parker, V.C., said, “I am certainly surprised to hear that stated, because, upon every principle, not only governing bodies of the kind, but governing private partnerships, where there is a body of persons in which the majority is to bind the minority, it is essential to the validity of all their acts, that the voice of the minority should be heard; that the minority should have an opportunity of stating their view; and it is not till they have had that opportunity, that the acts of the majority become binding on the minority; and I think Lord Eldon’s opinion may be referred to, as showing that even if the minority had a voice given to them, if there had been a combination among the majority, before that voice was received to overbear it, he should consider the acts of such a body illegal; and upon the principles of this Court I think that would be so.” *Great Western R. Co. v. Rushout*, 16 Jur. 238; 5 De G. & S. 290. See also on this subject *R. v. Langhorne*, 4 A. & E. 538; S. C. 6 N. & M. 203. Whether notice of an adjourned meeting is necessary, see *Wills v. Murray*, 4 Exch. 843; S. C. 19 Law J. (Exch.) 209; *R. v. Grimshaw*, 10 Q. B. 747; see also as to the notice of the meetings of shareholders, ante, 42, n. (*m*).

(*d*) *Kirk v. Bell*, 16 Q. B. 290.

(*e*) But the directors cannot delegate all their powers to a committee. *Great Western R. Co. v. Rushout*, 5 De G. & S. 290.

4. *The Power of Directors to enter into Contracts.*

Application of funds.

We shall now point out the sections of the Companies Clauses Act which authorize the directors of a railway company to manage its important concerns. We shall find that, unless controlled by the shareholders, by a vote at a general meeting, their authority, provided it is exercised in cases within the powers of the company, is of the most extensive character. The Companies Clauses Consolidation Act (8 & 9 Vict. c. 16, which is printed at length in the Appendix) enacts, that the money to be raised by subscriptions, loans, or otherwise, must be applied, first, in paying the costs of the special act (*f*); secondly, in carrying the purposes of the company into execution: (Sect. 65.) The directors shall have the management and superintendence of the affairs of the company, and they may lawfully exercise all the powers of the company (*g*), except as to such matters as are directed by that or the special act to be transacted by a general meeting of the company, but all the powers so to be exercised shall be exercised in accordance with and subject to the provisions of that and the special act; and the exercise of all such powers shall be subject also to the control and regulation of any general meeting specially convened for the purpose, but not so as to render invalid

(*f*) These may be recovered in an action of debt. *Hitchins v. Kilkenny and Great Southern and Western R. Co.*, 9 C. B. 536. Where six railways, parts of a system, were projected by the same person, and an act of parliament was obtained authorizing the construction of two only, the rest being abandoned, and the special act provided that the costs and charges of obtaining and passing the act, and incidental and preparatory thereto, should be paid by the company, it was held that the costs incurred in relation to the abandoned railways were to be regarded as costs incidental and preparatory to the obtaining of the act, and were payable by the company. *Re Tilleard*, 32 L. J. (Ch.) 765; 8 Law T. (N. S.) 587.

(*g*) In ordinary partnerships the act of one partner is the act of all. *Porthouse v. Parker*, 1 Camp. 82; *Jacaud v. French*, 12 East, 317. But this principle is not applicable to promoters of a company; *Hamilton v. Smith*, 28 L. J. (Ch.) 404, ante, p. 2, note (*e*); nor to an incorporated company, like a railway company, which cannot be affected by what may be done or known by any individual shareholder. In *Burnes v. Pennell*, 2 H. L. C. 521, Lord Campbell says on this subject, "The doctrine contended for would lead to the conclusion that a joint-stock company is liable on any contract entered into by any shareholder within the scope of the business for carrying on which the company is established; and that any contract, regularly entered into with the directors, may be vitiated by anything said or done by any share-

holder, without the authority or privity of the directors. Considering the important transactions now carried on through the medium of joint-stock companies, the doctrine is very alarming; but it rests on no principle, and no authority has been cited to support it." Neither will representations made by a law agent as to its commercial affairs bind the company.—*Ibid.* But it is a different question whether notice given to one member of a board of directors, may not bind the whole body of directors. See on this point *Powles v. Page*, 3 C. B. 16; also *Burnes v. Pennell*, supra—where Lord Campbell says, "We now come to the allegations respecting the acts of the directors themselves; and if the plaintiff has been deceived and defrauded by them, and induced by them to purchase the shares by their false representations, the interlocutor must be reversed. I do not think it necessary even that the representations should have been made personally to him. If the directors have made false representations, for the purpose of fictitiously enhancing the price of shares for their own benefit, and the appellant has thereby been deceived, and induced to purchase shares greatly beyond their value, the transfer of the shares, although executed, ought to be set aside. But the transfer having been executed, a clear and strong case of fraud ought to be established, and it must be shown that the purchaser of these shares was induced to purchase them by the deceit of the director."

any act done by the directors prior to any resolution passed by such general meeting: (Sect. 90.) The powers of directors.

The powers above referred to, which can be exercised only at a general meeting, are the choice and removal of the directors, except as hereinbefore mentioned, and the increasing or reducing of their number where authorized by the special act; the choice of auditors; the determination as to the remuneration of the directors, auditors, treasurers, and secretary (*h*); the determination as to the amount of money to be borrowed on mortgage; the determination as to the augmentation of capital, and the declaration of dividends: (Sect. 91.) In addition to the matters above enumerated, the special acts sometimes impose further limitations on the powers which the directors may exercise (*i*).

No director, by being party to or executing, in his capacity of director, any contract or instrument on behalf of the company, or otherwise lawfully executing any of the powers given to directors, shall be subject to be sued, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process, by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors and administrators, shall be indemnified, out of the capital of the company, for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid (if any): (Sect. 100.) Directors not personally liable for contracts.

The power which may be granted to any committee to make contracts, as well as the power of the directors to make contracts on behalf of the company, may lawfully be exercised as follows:— Modes in which contracts may be made.
With respect to any contract which, if made between private persons, would be by law required to be in writing, and under seal, such committee, or the directors, may make such contract on behalf of the

(*h*) But it is no answer to an action by a secretary for his salary, that no determination as to such salary has been exercised at a general meeting of the company. *Bill v. Darent Valley R. Co.*, 1 H. & N. 305; 26 L. J. (Exch.) 81. As to the right of directors to sue the company for remuneration, see *Dunston v. Imperial Gas Light Co.*, 3 B. & Ad. 125. It seems, that, under the general authorities contained in the statute, the company are authorized to grant a pen-

sion to an officer retiring in consequence of ill-health. *Clarke v. Imperial Gas Co.*, 4 B. & Ad. 325.

(*i*) It has been said that if they can dispose of shares at a premium, they are bound to do so for the benefit of the shareholders, as they stand in the situation of trustees for the company. *York and North Midland R. Co. v. Hudson*, 16 Beav. 485; 22 L. J. (Ch.) 529.

Modes in which contracts may be made.

company, in writing, and under the common seal of the company, and in the same manner may vary or discharge the same.

With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee, or the directors, may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors(k), and in the same manner may vary or discharge the same(l).

With respect to any contract which, if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, such committee, or the directors, may make such contract on behalf of the company, by parol only, without writing, and in the same manner may vary or discharge the same(m).

And all such contracts are declared to be effectual in law, and to be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators; and on any default in the execution of any such contract, either by the company, or any other party thereto, such actions or suits may be brought, either by or against the company, as might be brought, had the same contracts been made between private persons only: (Sect. 97)(n).

(k) Where an agreement was not so signed, specific performance was refused in equity. *Leominster Canal Navigation Co. v. Shrewsbury and Hereford R. Co.*, 26 L. J. (Ch.) 764.

(l) It will be prudent for directors to see that all contracts are carefully drawn. In *Dewers v. Pike*, Mur. & Hurl. 131, the defendant, a director of the West Cork Mining Company, ordered goods of the plaintiffs, and signed his name "P., director of W. C. M. Company," intimating at the time that the goods were for the company. The company were incorporated by act of Parliament, and in the act was a clause enabling the company to sue and be sued in respect of contracts made by any individual director on behalf of the company. It was decided that the defendant was liable in his private capacity; and per Parke, B., "I dare say the defendant intended to act on behalf of the company. He ought, however, to have used clear words; no doubt the plaintiffs had an option to sue him." So in *Healey v. Story*, 3 Exch. 3, where defendants, directors of a joint-stock newspaper company, gave a promissory note as follows: "On demand, we jointly and severally promise to pay to Mr. L. H. or order, the sum of 250*l.* value received, for and on behalf of the Wesleyan Newspaper Association," which was signed by the defendants as "directors," the court held that the words "jointly and severally" are equivalent to jointly and personally; and that the defendants were personally liable. See also *Burrell v. Jones*, 3 B. &

Ald. 47. When a party is not liable in his individual capacity, see *Tyrrell v. Woolley*, 1 Man. & G. 809; and the rule laid down by Wigram, V. C., in *Wilson v. Goodman*, 4 Hare, 62. See also *Wake v. Harrop*, 30 L. J. (Exch.) 273.

(m) See *Eales v. Cumberland Black Lead Mining Co.*, 30 Law J. (Exch.) 141. Where the agent of an incorporated railway company agreed by parol with the plaintiff to purchase of him a quantity of railway sleepers upon certain terms, and the sleepers were received and used by the company, it was held that there was evidence from which a jury might find a contract by the company. *Pauling v. L. and N. W. R. Co.*, 8 Exch. 867.

(n) The rule of the common law is, that a corporation, being an invisible body, cannot manifest its intentions by any personal act or oral discourse; and it therefore acts and speaks only by its common seal. For, though the particular members may express their private consents to any act, by words or signing their names, yet this does not bind the corporation; it is the fixing of the seal, and that only, which unites the several assents of the individuals who compose the community, and makes one joint assent of the whole. See Dav. 44, 48. In pursuance of this doctrine, all contracts made by corporations are required to be under their common seal, subject to certain exceptions, in favour of trading and other contracts. See *Beverley v. Lincoln Gas Light Co.*, 6 Ad. & E. 829; *Fishmongers' Co. v. Robertson*, 5 M. & G. 131; *Paine v. Strand Union*, 8 Q. B.

Minutes of all appointments, contracts, orders, and proceedings of the directors and committees, must be entered in books (o), and every

Books of proceedings.

326. These excepted cases depend upon very subtle distinctions; and the above enactment seemed likely to prevent many difficulties, which would otherwise have arisen, in enforcing contracts made by railway directors. But notwithstanding the general terms of the 97th section, some very important questions have arisen as to the validity of contracts not made strictly according to its provisions. In *Homersham v. Wolverhampton Waterworks Co.*, 6 Exch. 137; 20 Law J. (Exch.) 193; the Court of Exchequer expressed an opinion that a company cannot contract except in pursuance of the provisions of the 97th section; and the 98th section, which requires that a note of all contracts should be entered in a book, was referred to, for the purpose of showing that a contract to be implied by an acceptance of goods or services, could not arise in any case,—and it was accordingly determined that an engineer, who had entered into a contract to perform certain works for the company under seal, could not recover a sum of money which he charged for extra works, although all these extra works were done with the approval of the engineer to the company. The court seemed to be of opinion that the mere fact of the work being done and accepted, was not sufficient to charge the company, in the absence of proof of any order from the directors. *Lamprell v. Billericay Union*, 3 Exch. 283; 18 Law J. (Exch.) 282; *Cope v. Thames Haven Co.*, 3 Exch. 841; 18 Law J. (Exch.) 345; *Diggle v. London and Blackwall R. Co.*, 5 Exch. 442; 19 Law J. (Exch.) 308; are also authorities to the like effect. But the ruling of the Court of Exchequer, in these cases, has not been followed in the other courts, and, although without reference to the above section, another and more satisfactory rule seems to be laid down, *i. e.*, that whenever a corporation is created for particular purposes, which involve the necessity for frequently entering into contracts for goods or works, essentially necessary for carrying the purposes for which the corporation is created into execution, a demand in respect of goods or works which have actually been supplied to and accepted by the corporation, and of which they have had the full benefit, may be enforced by action,—although the contract was not entered into in conformity with the strict rules of law. Thus in *Sanders v. Guardians of St. Neot's Union*, 8 Q. B. 810, the defendants, a corporation, gave a verbal order for some iron gates, and the objection that there was no contract under seal was denied them, inasmuch as the work was completed, and adopted by them for purposes connected with the corporation. So in *Beverley v. Lincoln Gas Light Co.*, 6 A. & E. 829, a corporation was held liable to be

sued in assumpsit for gas meters supplied upon an order given by one of the members of the corporation. So Lord Campbell, C. J., in *Governor of Copper Miners v. Fox*, 16 Q. B. 229; 20 Law J. (Q. B.) 174, observes—"Had the subject-matter of this contract been copper, or if it had been shown in any way to be incidental or ancillary to carrying on the business of copper miners, the contract would have been binding, although not under seal; for where a trading company is created by charter, while acting within the scope of the charter, it may enter into the commercial contracts usual in such a business in the usual manner." So in *Lowe v. L. and N. W. R. Co.*, 21 Law J. (Q. B.) 361; 18 Q. B. 632; a railway company were held liable to be sued for the actual use and occupation of the plaintiff's land, although no contract made under seal, or by the authority of a director, was proved. The court decided this case, not only on the grounds that when land was actually occupied, the law would imply a promise to pay a reasonable compensation for its use, but they also intimated that if it were necessary to refer to the provisions of the 97th section of the act, they would presume that there was a parol contract made by a director to pay for the use of the land. See also on the first point *Finlay v. Bristol and Exeter R. Co.*, 7 Exch. 409, and on the last, *Doe d. Birmingham Canal Co. v. Bold*, 11 Q. B. 127; *Pauling v. London and North Western R. Co.*, 8 Exch. 867; *supra*, note (m). So in *Smith v. Hull Glass Co.*, 21 Law J. (C. P.) 106; 16 Jur. 595; 11 C. B. 897; a joint stock company were held liable to pay for goods which had been delivered and used for the purposes of the company, although the goods had been ordered by persons who had no authority under the statute to give such orders. See also the remarks made by Sir J. Wigram, V. C., in *Nixon v. Taff Vale R. Co.*, 7 Hare, 148; *Waring v. Manchester R. Co.*, *Ibid.* 482; and *Pennington v. Tanriere*, 18 Law J. (Q. B.) 49; *Royal British Bank v. Turquand*, 5 E. & B. 248; 6 E. & B. 327; *Greenwood's case*, 3 De G., Macn. & G. 459; *Agar v. Athenæum Life Assurance Society*, 3 C. B., N. S. 725; 27 L. J. (C. P.) 95; *Prince of Wales Assurance Society v. Athenæum Assurance Society*, 27 L. J. (Q. B.) 297; *Re Athenæum Life Assurance Co.*, 27 L. J. (Ch.) 829, in which last cases dissent from a dictum of Lord Wensleydale in *Ernest v. Nicholls*, 6 H. L. C. 418, is expressed. See also *Athenæum Life Assurance Co. v. Pooley*, 28 L. J. (Ch.) 119. In *Clarke v. Guardians of Cuckfield Union*, 16 Jur. 686; 21 Law J. (Q. B.) 349; Bail C. C. 81, Wightman, J., after reviewing all the authorities, decided that, in the absence of any contract under seal, the guardians of a poor law union might be sued in assump-

(o) See note (o), p. 52.

Books of proceedings.

such entry signed by the chairman presiding at the meeting (*p*), and the minutes are then receivable in evidence, without further proof: (8 & 9 Vict. c. 16, s. 98.) And all acts done by directors are valid, although a director may have been disqualified or defectively appointed: (Sect. 99.)

Ordinary contracts considered.

Reserving for another occasion, the consideration of an important class of cases, which relates to the extent to which directors may pledge the credit and money of the company, by making contracts or

sit, for the price of water-closets supplied at the workhouse by an order of the board, and erected with their knowledge and approbation. See also *Smart v. West Ham Union*, 10 Exch. 867; 11 Exch. 867; *London Dock Co. v. Sinott*, 27 L. J. (Q. B.) 129; *Haigh v. North Bierley Union*, 28 L. J. (Q. B.) 62. The foregoing cases relate to contracts wherein the corporations were sued as defendants, but the principle on which they are decided would also affect cases where they sue on contracts as plaintiffs. On this point *Church v. Imperial Gas Co.*, 6 A. & E. 859, decides that a corporation created for the purpose of supplying gas may sue on an executed contract, whereby the defendants agreed to accept a supply of gas from year to year, although the contract was not under the common seal of the company. So, in the absence of proof of a contract under seal, a corporation may sue in assumpsit, for the use and occupation of land belonging to the corporation. *Dean of Rochester v. Pearce*, 1 Camp. 466. There is another class of cases in which all the courts agree that a corporation may contract by parol, instead of affixing the corporate seal, or calling a meeting of a board of directors. These are cases where the acts are trivial in their nature, and of frequent occurrence, and necessarily entered into for the proper management of the affairs of the company; such as the hiring of servants and other similar acts. *Cope v. Thames Haven R. Co.*, 3 Exch. 341; 18 Law J. (Exch.) 345; *Eastern Counties R. Co. v. Broom*, 6 Exch. 314; 20 Law J. (Exch.) 196; *Roe v. Birkenhead, Lancashire and Cheshire Junction R. Co.*, 7 Exch. 36; 21 L. J. (Exch.) 9; *Giles v. Taff Vale R. Co.*, 2 E. & B. 822; *Stevens v. Midland R. Co.*, 10 Exch. 352. It has been held both in England (*Whitfield v. South Eastern R. Co.*, 27 L. J. (Q. B.) 229), and America (*Philadelphia, Wilmington, and Baltimore Railroad Corporation v. Quigley*, 21 Howard's Rep. 202), that a railway company is responsible for a libel published by its agents in the course of its business and their employment. See further, Manley Smith's *Master and Servant*, p. 11, 2nd ed.

It has also been decided that an attorney ought to be appointed under seal, to defend or bring actions for a corporation. *Thames Haven Dock Co. v. Hall*, 5 Man. & G. 274; *Arnold v. Mayor of Poole*, 4 Man. & G. 860. But in a case where a special act provided

that the directors of a company might appoint or displace any officers of the company, Wightman, J., held that it was not necessary to show that the attorney to the company, who had signed a notice of appeal, was appointed their attorney under the seal of the corporation. *R. v. Justices of Cumberland*, 5 Railw. C. 332; 5 D. & L. 431, n. (a). So where an attorney agreed to refer an action brought against a railway company by a judge's order, it was decided that the submission was valid, though the attorney had no authority under seal to defend or refer the cause. *Faviell v. Eastern Counties R. Co.*, 2 Exch. 344; S. C. 6 Dowl. & L. 54.

(*o*) The words used in this section confer a privilege, but do not exclude other evidence of the facts: per Lord St. Leonards, C., in House of Lords, *Inglis v. Great Northern R. Co.*, 16 Jur. 895. See also *R. v. Justices of Leicester*, 7 B. & C. 6; *R. v. Inhabitants of Birmingham*, 8 B. & C. 29; *Cole v. Green*, 6 M. & G. 872; *Smith v. Huggett*, 31 L. J. (C. P.) 39.

(*p*) Where a statute required that the directors should keep a minute and entry of the orders and proceedings of every meeting of the directors, "which shall be signed by the chairman at each respective meeting," and the evidence showed that the minutes had been signed by the chairman, not at the meeting when the proceedings took place, but at the next meeting, over which he also presided as chairman,—it was held that the minutes were sufficiently signed. *Southampton Dock Co. v. Richards*, 1 M. & G. 448; S. C., 2 Railw. Cas. 215; 1 Scott, N. R. 219. This doctrine has been since affirmed in the House of Lords, and applied to the 98th section; see the judgment by Lord St. Leonards, C., in *Inglis v. Great Northern R. Co.*, 16 Jur. 895; 1 M. & G. 112. See also on the same point *London and Brighton R. Co. v. Fairclough*, 2 Man. & G. 674; 2 Railw. Cas. 544; 3 Scott, N. R. 68; *West London R. Co. v. Bernard*, 3 Q. B. 873; *Miles v. Bough*, 3 Q. B. 845; 3 Gale & D. 119; *Sheffield and Manchester R. Co. v. Woodcock*, 2 Railw. Cas. 522; 7 Mee. & W. 574. But where, at a subsequent meeting, a minute not having been previously signed, a call was confirmed, held not sufficient. *Cornwall Lead and Copper Mining Co. v. Bennett*, 29 L. J. (Exch.) 157. See also *Eales v. Cumberland Black Lead Mining Co.*, 30 L. J., Exch. 141.

entering into other engagements (*q*), we shall conclude this division of our subject by making a few remarks on some ordinary contracts, which are commonly brought under consideration.

As it would be quite foreign to the purposes of a railway company to draw or accept bills of exchange, it may perhaps be assumed that it could not have been the intention of the legislature to give the directors power to negotiate such bills; and, consequently, if the directors draw or accept a bill of exchange, and even describe themselves as directors, they could not bind the company by such an act, although they may make themselves personally liable to pay the bill (*r*). It has been decided that the directors of a cemetery company have no such power (*s*); and although a distinction may be suggested, that railway companies are accustomed to carry on the business of carriers, it is presumed that the same rule must prevail.

So as the powers to borrow money are always limited by the special act, the directors have no authority to borrow beyond the specified amount, and if they do, the company will not be bound by their act (*t*).

Nor will the company be bound by a cheque drawn by directors on the company's bankers, unless it be properly signed. Thus, where three directors of a railway company, in the name of the company, signed a document intended to operate as a cheque on the company's bankers, for payment to a third party of the company's money, and the document was signed by them in their own names, and countersigned by the secretary of the company, with the word "secretary" added to his signature, and a stamp bearing the name of the company was affixed, but the three directors did not appear on the face of the cheque to sign as directors, or to be directors: it was ruled that the document did not purport to be the cheque of the company, and was not binding on them (*u*).

We will here mention some decisions which relate to the construction of contracts, where no questions have arisen as to the authority of the directors to enter into the particular contract.

Where an obligation entered into by deed has by a subsequent act of Parliament been rendered impossible to be performed, a court of law will, it seems, take it for granted that due provision has been

(*q*) Post. The following branches of this subject are also hereafter discussed, *i. e.*, Contracts made for the purchase of lands, both before and after the Special Act is obtained: Contracts made by the servants of the company; and Contracts made by the company, in their capacity as carriers. See the Index for a reference to these subjects.

(*r*) *Healey v. Story*, 3 Exch. 3; *Owen v. Van Uster*, 10 C. B. 318.

(*s*) *Harmer v. Steele*, 4 Exch. 1; S. C. 19 Law J. (Exch.) 34.

(*t*) *Burmester v. Norris*, 6 Exch. 796; 21 Law J. (Exch.) 43; *Teversham v. Camerons Co.*, 13 Jur. 325; *Re German Mining Co.*, 14 Jur. 874. A different question would arise if the shareholders confirmed the act, at a meeting duly convened. As to "Lloyd's Bonds," see post, p. 141; and see 7 & 8 Vict. c. 85, s. 19, post, App. 23, on the subject of illegal loans.

(*u*) *Serrell v. Derbyshire, Staffordshire and Worcester Junction R. Co.*, 19 Law J. (C. P.) 371; 9 C. B. 811.

Bills of exchange.

Money borrowed.

Cheques informally drawn.

Contracts released by act of Parliament.

made for compensating the party who would otherwise have been entitled to recover damages, and the existence of the act may be pleaded in answer to an action on the contract (*v*). It seems, therefore, that when railway companies have become amalgamated, the legal rights of the company depend upon the powers which have been conferred upon them by Parliament, unfettered by previous agreements which are inconsistent with the plain intention of the legislature. In one case the House of Lords held the amalgamated company to be bound by a covenant entered into, by one of the companies, with a landowner, previous to amalgamation (*x*).

Construction of
contracts.
Agreement to
stop at a station.

Where a company granted a lease for ninety-nine years of some refreshment rooms, and it was declared to be the intention of the company, and the understanding of the plaintiff, that, in consideration of the outlay incurred in erecting the refreshment rooms, the company should give every facility to the plaintiffs, to enable them to obtain an adequate return, by means of the rents and profits to be derived from the refreshment rooms, and that all trains carrying passengers, (not being goods trains or trains to be sent express or for special purposes, and except trains not under the control of the company,) which should pass the station either up or down, should, save in case of emergency or unusual delay arising from accidents, stop there for the refreshment of passengers for a reasonable period of about ten minutes; and that, as far as the company could influence the same, the trains not under their control should be induced to stop for the like purpose; and the company thereby engaged not to do any act which should have an effect contrary to the above intention: it was decided, first, that this was an absolute covenant that the trains should stop ten minutes to enable the passengers to obtain refreshments, and secondly, that express trains "are not trains sent by express or for special purposes," within the exception of the covenant (*y*).

Duration of an
agreement to
grant running
powers.

The plaintiffs, a railway company, agreed with the defendants as follows:—That a station on the defendants' line should be used equally by both companies, subject to the bye-laws of the defendants, and that a committee from each Board should be appointed to arrange the working of the traffic; that the cost of the station and the work-

(*v*) *Wynn v. Shropshire Union R. Co.*, 5 Exch. 441; and see *Stevens v. South Devon R. Co.*, 21 Law J. (Chan.) 816.

(*x*) *Edinburgh and Glasgow R. Co. v. Campbell*, 9 Law T., N. S. 157. As to companies amalgamated after 28th July, 1863, by special act incorporating "The Railways Clauses Act, 1863;" see that act, 26 & 27 Vict. c. 92, s. 40, et seq., post, Appendix.

(*y*) *Rigby v. Great Western R. Co.*, 14

M. & W. 811; *Same v. Same*, 15 Law J. (Chan.) 266. It was further held on a case sent from Chancery that Rigby, having demised the refreshment rooms with a covenant to do all such things as should be necessary for enforcing performance of the covenant on the part of the company to stop the trains, was bound to file a bill for an injunction to restrain the company from allowing express trains to pass without stopping. *Same v. Same*, 4 Exch. 220.

ing should be borne equally; that the defendants should have the right of running with their engines on the plaintiffs' line, and that the plaintiffs should have the same right over the defendant's line, paying in either case a certain per-centage of the gross receipts to the company whose line was used; and that each company should provide station accommodation for the other for three years, according to certain specified conditions.

Duration of an agreement to grant running powers.

On this agreement there were two alternative constructions contended for; one, that the last article of the agreement was merely a licence to use the line interchangeably by the two companies, determinable at the will of the defendants; the other, that it was a contract binding on both parties for ever, not to be varied against either party without the consent of that party. Sir J. Parker, V. C., on a motion for an injunction, was of opinion that the latter was the true construction. The language of the agreement was not such as would be used in a mere licence or permission to use the line, determinable at pleasure. If, for a valuable consideration, one party said that another should have a right in the nature of an easement, *primâ facie* the inference would be, that it was not a mere licence determinable at the will of the grantor. His Honor said it was not immaterial to observe that the persons to whom the right was given were a body corporate, and at common law, a grant to them of the right of running engines on and using the line, without using any words of succession, as, to them "and their successors," would give a fee simple, without naming successors. If the language had been, that they "and their successors" should have the right of running their engines, there would have been no doubt. The word "successors," however, was not a word which was material when dealing with rights to be conferred on, or acknowledged to be made to, a body corporate. The word "company" meant a body which was to exist for ever; and therefore this contract was very different from a contract with an individual not using the word "heirs." It was a contract that the company—that is a body which endured for ever—should have a right of this description, and if the substance of the agreement were considered, it was evidently of a permanent nature (z).

Where by an agreement a manufacturer agreed to supply a company during three years, with such quantities of iron pipes as should from time to time during the said period be required by the defendants, at a certain price, it was ruled that the manufacturer was bound to supply all such pipes as were requisite to supply the reason-

Contract to supply material.

(z) *Great Northern R. Co. v. Manchester R. Co.*, 5 De G. & S. 138; 16 Jurist, 146; and see *Lancashire and Yorkshire R. Co. v.*

East Lancashire R. Co., 7 Exch. 126, and other cases, post.

able wants of the company, in the course of the execution of the works authorized by the company's act (*a*).

Rights of contractor when engineer's certificate withheld.

Where, by a contract entered into with a railway company, it is stipulated that goods, *e. g.*, coke (*b*), shall be supplied to, or works executed for the company, to the satisfaction of some *third person* or of *their own officer or engineer* for the time being, and that no money shall be paid by the company until his certificate is obtained, the obtaining of that certificate is a condition precedent to the right to the money. Until such third person, officer or engineer has spoken (*c*), the contractor has no rights which he can enforce, either at law or in equity (*d*). Parties therefore ought to be careful how they enter into contracts giving such powers. If, however, the works are to be executed to the satisfaction of the *other party*, then this satisfaction must be reasonable (*e*). And if the certificate of such third person is withheld unjustly, fraudulently or collusively, for the purpose of preventing the contractor getting his money, he may either sue the person withholding the certificate (*f*); or, perhaps, bring his action against the person who ought to pay the money, charging that the certificate is withheld in collusion with the defendant and by his procurement (*g*). Where a bill was filed against a corporation and their engineer for payment of the contract price of certain works, and the case against the engineer broke down, the bill was dismissed with costs, as against the corporation also (*h*). And in a case of this kind, where the transactions between the parties are of a complicated nature, the defendants will not be allowed to resist the plaintiff's claim in equity, upon the ground that the remedy is only at law (*i*).

(*a*) *Whitehouse v. Liverpool Gas Co.*, 5 C. B. 798. As to the construction of a contract, whereby the plaintiff agreed to supply 350,000 sleepers, and whether the defendants were bound to give notice when they were wanted, see *Harrison v. Great Northern R. Co.*, 21 Law J. (C. P.) 89; 11 C. B. 815; *S. C.* in Error, 16 Jur. 565; 22 Law J. (C. P.) 49; 12 C. B. 576.

(*b*) *Grafton v. Eastern Counties R. Co.*, 8 Exch. 699.

(*c*) The certificate need not be in writing unless that is expressly stipulated for. *Roberts v. Watkins*, 32 L. J. (C. P.) 291; 14 C. B. (N. S.) 592.

(*d*) *Scott v. Corporation of Liverpool*, 27 L. J. (Ch.) 641; 28 L. J. (Ch.) 230; *Munro v. Butt*, 8 E. & B. 738; *McIntosh v. Great Western R. Co.*, 2 De G. & Sm. 758; 18 L. J. (Ch.) 94; on appeal, 2 Macn. & G. 74; 19 L. J. (Ch.) 374; 3 Sm. & G. 146; 24 L. J. (Ch.) 469; *Waring v. Manchester R. Co.*, 18 Law J. (Ch.) 450; 2 Hall & Twells, 259; *Padley v. Lincoln Waterworks Co.*, 19 Law J. (Ch.) 436. When equity will not interfere, for the purpose of compelling a company to carry into effect a contract made by their agent, which was not legally binding on the company, see *Jackson v. North Wales*

R. Co., 18 Law J. (Ch.) 91.

(*e*) *Parsons v. Sexton*, 4 C. B. 899; *Stadhard v. Lee*, 32 L. J. (Q. B.) 77; 3 Best & S. 364. See this case as to the employer's right to proceed himself with the work, if not proceeded with to his satisfaction, and deduct the cost from the contract price.

(*f*) *Morgan v. Birnie*, 9 Bing. 673; *Milner v. Field*, 5 Exch. 829; *Scott v. Corporation of Liverpool*, on demurrer to bill against engineer, which was overruled, 25 L. J. (Ch.) 227.

(*g*) *Batterbury v. Vyse*, 32 L. J. (Exch.) 177; 8 L. T., N. S. 283; 2 H. & C. 42.

(*h*) *Scott v. Corporation of Liverpool*, *ubi supra*.

(*i*) *Macintosh v. Great Western R. Co.*, 16 Jur. 1012; 19 Law J. (Ch.) 374. Under what circumstances equity will interfere to prevent a party from proceeding at law, on the ground that the accounts of several contracts have become blended, and that the contractor has set up claims which could not be satisfactorily disposed of at law, see *South Eastern R. Co. v. Brogden*, 14 Jurist, 795; 3 Macn. & Gord. 8; and when other grounds of dispute arise between a contractor and a company, *East Lancashire R. Co. v. Hattersley*, 8 Hare, 72.

If a contractor or engineer sues the company at law (*k*), or in equity (*l*), he will be required to furnish specific particulars of his demand.

5. *The Control of the Shareholders over the Directors.*

From the foregoing statement of the powers entrusted to the directors of a railway company, we have seen that the general superintendence and management of its affairs belong to them, and that the shareholders may always call a general meeting of the company, and at such meeting the majority may control and regulate the future proceedings of the directors (*m*).

Control of shareholders over directors.

The result seems to be, that the supreme control of the affairs of a railway company is vested in the shareholders, who have power at general meetings, due notice having been given of the purpose of such meetings, to originate proceedings for any purpose within the scope of the company's powers, and also to control the directors in any acts which they may have originated (*n*). On the other hand, the acts of the directors are valid, provided they are such as fall within the scope of their authority, until the shareholders interfere, by entering into resolutions, at a general meeting, duly called pursuant to the provisions of the statute (*o*).

If, therefore, the shareholders of a company are dissatisfied with the proceedings of the directors, the proper course is to convene a general meeting of shareholders, and thus submit the proceedings of the directors to the decision of the governing body; and if the directors do any act inconsistent with the decision of the general meeting, an injunction may be obtained against them (*p*). Courts of equity will not, however, enforce every duty, which the governing body of a railway company owe to their constituents, the shareholders. Whenever the acts of the directors are capable of being rectified by the shareholders themselves in the exercise of their own powers, equity will not interfere; questions of internal regulation and management must, therefore, be decided by the shareholders themselves (*q*).

Questions of internal regulation to be settled by shareholders at a meeting.

(*k*) *Prichard v. Nelson*, 16 M. & W. 772; 11 Jur. 375; *Berkly v. De Vere*, 4 D. & L. 97.

(*l*) *Macintosh v. Great Western R. Co.*, 22 Law J. (Ch.) 72.

(*m*) As to the sanction of shareholders to working agreements between companies, see 26 & 27 Vict. c. 92, s. 23, post, Appendix.

(*n*) *Foss v. Harbottle*, 2 Hare, 492.

(*o*) 8 & 9 Vict. c. 16, s. 90, post, Appendix.

(*p*) *Exeter R. Co. v. Buller*, 16 Law J.

(Ch.) 449. The Courts of Equity will take no notice that a purchase of shares was made for the purpose of enabling the purchasers to attend at a general meeting, and reverse a former decision which a majority of the shareholders had come to, and which was adverse to the interests of the purchasers of the shares. *Ibid*.

(*q*) *Brown v. Monmouthshire R. Co.*, 13 Beav. 32; 20 Law J. (Ch.) 497; *Stevens v. South Devon R. Co.*, 9 Hare, 313; 21 Law J., (Ch.) 816; *Kent v. Jackson*, 14 Beav. 367; 21 Law J. (Ch.) 438.

Example, *Foss v. Harbottle*.

Thus in *Foss v. Harbottle*(*r*), where certain shareholders of a company, who were dissatisfied with the conduct of the directors, neglected to summon a general meeting of the shareholders, but filed a bill in equity against the directors, Sir J. Wigram, V.C., observed:—

“It is only necessary to refer to the clauses of the act, to show that, whilst the supreme governing body, the proprietors, at a special general meeting assembled, retain the power of exercising the functions conferred upon them by the act of incorporation, it cannot be competent to individual corporators to sue in the manner proposed by the plaintiff. This, in effect, purports to be a suit by cestui que trusts, complaining of a fraud committed, or alleged to have been committed, by persons in a fiduciary character. The complaint is, that those trustees have sold lands to themselves, ostensibly for the benefit of the cestui que trusts. The proposition I have advanced is, that, although the act should prove to be voidable, the cestui que trusts may elect to confirm it. Now who are the cestui que trusts in this case? The corporation, in a sense, is undoubtedly the cestui que trust; but the majority of the proprietors at a special general meeting assembled, independently of any general rules of law upon the subject, by the very terms of the incorporation, has power to bind the whole body, and every individual corporator must be taken to have come into the corporation, upon the terms of being liable to be so bound. How, then, can this Court act in a suit constituted as this is, if it is to be assumed, for the purposes of the argument, that the powers of the body of the proprietors are still in existence, and may lawfully be exercised for a purpose like that I have suggested? Whilst the Court may be declaring the acts complained of, to be void at the suit of the present plaintiffs, who, in fact, may be the only proprietors who disapprove of them, the governing body of proprietors may defeat the decree, by lawfully resolving upon the confirmation of the very acts which are the subjects of the suit. The very fact, that the governing body of the proprietors assembled at the special general meeting may so bind even a reluctant minority, is decisive that the frame of this suit cannot be sustained whilst that body retains its functions. In order, then, that this suit may be sustained, it must be shown, either that there is no such power as I have supposed remaining in the proprietors, or at least, that all means have been resorted to, and found ineffectual, to set that body in motion.”

Lord Cottenham's approval of *Foss v. Harbottle*.

Lord Cottenham, C., in subsequent cases said, that he fully concurred in the observations made by Sir J. Wigram in *Foss v. Harbottle*, and that the judgment in that case correctly represented the principles and practice of the court, in reference to suits of that description (*s*). Lord Langdale, M. R., refused, on similar grounds, to restrain the directors of a company from enforcing a call on shares which it was alleged the directors made, so as to give an undue preference to two out of three classes of shareholders, for the purpose of executing works which the company had no power to make. His Lordship said that the case could only be considered, as an attempt to induce the Court to interfere in the internal management of the affairs of the company, and to take on itself to determine the question,

(*r*) 2 Hare, 461; and see *Thames Haven Dock and R. Co. v. Hall*, 3 Railw. C. 441.

(*s*) *Mozley v. Alston*, 1 Phillips, 790; 16 Law J. (Ch.) 217; *Lord v. Copper Miners*

Co., 2 Phillips, 740; 18 Law J. (Ch.) 65; see also *Hattersley v. Earl of Shelburne*, 31 L. J. (Ch.) 873.

what calls shall be made, and to determine matters which ought to be determined by the shareholders themselves at general meetings. The only foundation for relief was, the allegation that the calls, in the circumstances that had happened, were not wanted; that the plaintiff and other shareholders of a class to which he belongs were likely to be defrauded by a scheme formed by the other shareholders, to benefit themselves and other classes of shareholders, to the prejudice of the plaintiffs, and were proceeding to enforce calls on them in pursuance of such alleged fraudulent scheme. The bill contained many allegations of improper and fraudulent motives; but these allegations did not rest on any specific facts, sufficient to support the imputations, and the plaintiffs, so far from stating that any attempts had been made to bring the matters under the consideration of the shareholders, and to procure any resolution of the directors to be rescinded, stated the contrary, and that most of the shareholders, for whom he sued, had not attended the meetings, or made any attempt to correct errors that had been made. It did not appear from facts distinctly alleged that it might not be right and just to enforce payment of the calls complained of, either for the purpose of carrying on works which it might be necessary to complete, or for the purpose of paying debts, or answering liabilities, which must be provided for. It would be impossible for the Court to entertain jurisdiction in such a case as that, without assuming authority to interfere in the internal management of all companies and partnerships, whenever a question arose as to the proper amount of the call required for the lawful purposes of the act (*t*).

Foss v. Harbottle, approved by other judges.

But if it is absolutely necessary that the Court should interfere at once, because irreparable injury would be done, before the time for taking the necessary steps to call a general meeting of the shareholders elapsed, then the rule above mentioned seems not to prevail (*u*).

Cases where the rule does not prevail.

There is also a distinction to be observed between unauthorized acts on the part of directors, voidable only, and which it is competent for the governing body to confirm at a general meeting, and acts which are altogether void, and which may not be so confirmed (*x*). Thus, if directors are guilty of fraud or misconduct, in committing unauthorized acts in the name of the company, proceedings in equity may be taken against them by the shareholders who are aggrieved, and the Court will hold the parties liable for all losses and expenses sustained by their misconduct (*y*). And if the directors improperly

Distinction between legal and illegal acts of directors.

(*t*) *Bailey v. Birkenhead Junction R. Co.*, 12 Beav. 433; 19 Law J. (Ch.) 377.

(*u*) *Great Western R. Co. v. Rushout*, 16 Jurist, 238; 5 De G. & Sm. 290, 310; 7 Railw. C. 990.

(*z*) *Ware v. Grand Junction Waterworks*

Co., 2 Russ. & M. 470; *Ward v. Society of Attornies*, 1 Collier, 370.

(*y*) *Attorney-General v. Wilson*, 1 Craig & Ph. 1; *Society for Practical Knowledge v. Abbott*, 2 Beav. 559; *Jones v. Rose*, 4 Hare, 52.

withhold the seal of the company, so that it cannot be used, a bill may be filed against them in the name of the company (*z*). And where the liability arises from the wrongful act of the parties, each is liable for all the consequences, and there is no contribution between them. It is, therefore, not necessary to make all who may, more or less, have joined in the act complained of, parties to the suit. And although in general all such suits ought to be prosecuted in the name of the corporation (*a*), yet, if a case arises of injury to some of the members of the corporation, for which no adequate remedy remains, except that of a suit by individual corporators, in their private character, and asking in such character the protection of those rights to which, in their corporate character, they are entitled, the Court of Equity will dispense with the presence of parties, who would, according to the general practice, have been necessary parties to the suit (*b*).

If the acts are illegal, one or more of the shareholders may obtain relief in equity.

Lord Cranworth, V. C., observes on this point, in *Beman v. Rufford* (*c*), the principle on which these shareholders filed this bill is this, that they are entitled to file it on behalf of themselves and all others, because the Court will not tolerate any person saying that all are not interested in having the law of their company carried into effect. It will not allow any speculation that it would be more advantageous to do something which the act of Parliament does not authorize to be done; therefore it is, that in this, as in many other cases, one shareholder may file a bill on behalf of himself and others, although at a meeting of the company a great many of the other shareholders, even the majority, may say that they have sanctioned a different course of proceeding. So, in a case when the directors of a company applied a portion of the profits to the purchase of shares in another company, Lord Langdale, M. R., allowed an individual shareholder to take proceedings in equity, without requiring him to obtain the concurrence of the whole corporation in the proceeding (*d*). And a

(*z*) *Exeter R. Co. v. Buller*, 16 Law J. (Ch.) 449.

(*a*) *Foss v. Harbottle*, 2 Hare, 461; *Mozley v. Alston*, 1 Phil. 790. If a director improperly retains premiums arising from the sale of shares, he is liable in equity to be sued for the amount of the premiums, with interest thereon at the rate of five per cent. *York and North Midland R. Co. v. Hudson*, Weekly Rep. 1852-3, p. 188; 16 Beav. 485; 22 L. J. (Ch.) 529. See *Lane's Case*, 33 L. J. (Ch.) 84.

(*b*) *Preston v. Grand Collier Dock Co.*, 2 Railw. Cas. 335; S. C. 11 Sim. 327; *Walworth v. Holt*, 4 My. & Cr. 619; *Lund v. Blanshard*, 4 Hare, 9; *Ibid.* 290; *Cooper v. Webb*, 15 Sim. 454; *Salomons v. Laing*, 12 Beav. 377; 19 Law J. (Ch.) 269; *Clements v. Bowes*, 21 Law J. (Ch.) 306; *Wilson v. Stanhope*, 2 Coll. 629; *Doyle v. Muntz*, 5 Hare, 509; *Lovell v. Andrew*, 15 Sim. 585; *Carlisle v. South-Eastern R. Co.*,

1 Macn. & Gord. 689; 19 Law J. (Ch.) 477; *Edwards v. Shrewsbury and Birmingham R. Co.*, 2 De Gex & Sm. 537. Where bills were held defective for want of parties, see *Bailey v. Birkenhead Junction R. Co.*, 19 Law J. (Ch.) 377; *Clarke v. Archibald*, 17 L. J. (Ch.) 140; *M'Bride v. Lindsay*, 9 Hare, 574; 16 Jur. 535. But see now 15 & 16 Vict. c. 86, s. 49, which applies to bills filed for relief against the acts of managing directors of a proposed railway company. *Clements v. Bowes*, 22 Law J. (Ch.) 1022.

(*c*) 1 Sim. N. S. 556; 20 Law J. (Ch.) 537; *Winch v. Birkenhead R. Co.*, 16 Jurist, 1035; *Bagshaw v. Eastern Union R. Co.*, 7 Hare, 114; 19 L. J. (Ch.) 410; 2 Macn. & G. 389, acc.

(*d*) *Salomons v. Laing*, 12 Beav. 377; 19 Law J. (Ch.) 291, contrary to *Edwards v. Shrewsbury and Birmingham R. Co.*, 2 De Gex & Sm. 537. See also *Yetts v. Norfolk R. Co.*, 3 De Gex & Sm. 293; *Hare v. Lon-*

railway company holding shares in another company in the names of trustees, may be plaintiffs in such a suit, provided the trustees are made defendants (*e*).

But although one shareholder may undoubtedly, in general, file a bill, on behalf of himself and the other shareholders (*f*), for the purpose of restraining the directors from pursuing a line of conduct which is illegal; yet where a person, in the interests of some third person, purchases shares for the purpose of questioning the legality of the acts of the directors, and constituting litigation with an indirect view to the benefit of such third person, and not really for the benefit of the other shareholders, the Court will take into consideration not merely the interests of the individual plaintiff, but also of the whole company, and will very likely think the latter best protected by dismissing the bill with costs. Where, therefore, a railway company purchased a canal under the powers of their act of Parliament, and then proceeded, under 8 & 9 Vict. c. 42, s. 8, to take a lease of the tolls of another canal, and the clerk of a third canal company, which was likely to be injured thereby, took some shares in the railway company, and filed a bill on behalf of himself and the other shareholders in the railway, to prevent the acceptance of the lease,—it was held, that the taking of the lease was not *ultra vires*, and Lord Justice Knight Bruce added—

Bill filed colourably.

Rogers v. Oxford, Worcester and Wolverhampton R. Co.

“But if on the legal point there is room for doubt, the circumstances do not, in my judgment, render it imperative on the Court to act against the company, or to retain the bill to which the Attorney-General is not a party,—a bill certainly not filed with any view to the benefit of the company or its shareholders, nor likely, I think, to be of advantage to them. It describes with commendable accuracy the plaintiff's official connexion with the Grand Junction Canal Company, the managers of which, under the influence of motives obvious enough, but not including, I repeat, any wish to do good to the railway company or its proprietors, seem to have made him a shareholder in the railway company for the mere purpose of constituting this litigation, of which, in my opinion, it will be beneficial to those interests that he professes a desire of protecting, and be right, to dispose without more delay by dismissing the bill with costs” (*g*).

These views have subsequently been acted upon by the Lord Chancellor (*h*) and also by the Vice-Chancellors (*i*).

don and North Western R. Co., 30 Law J. (Ch.) 817; 2 Johns. & Hemm. 80.

(*e*) Per Sir J. Parker, V. C., *Great Western R. Co. v. Rushout*, 16 Jurist, 238; 5 De Gex & Sm. 290.

(*f*) A shareholder filing a bill against the company and directors, for a breach of trust, must sue on behalf of himself and the other shareholders. See *White v. Carmarthen and Cardigan R. Co.*, 33 L. J. (Ch.) 93; 1 Hemm. & Mill. 786.

(*g*) *Rogers v. Oxford, W. and W. R. Co.*, 2

De Gex & Jo. 662.

(*h*) *Forrest v. Manchester, Sheffield and Lincolnshire R. Co.*, July, 1861, on appeal from M. R., 30 Beav. 40.

(*i*) Stuart, V. C., in *Ffooks v. South Western R. Co.*, 1 Sm. & Giff. 142; Wood, V. C., in *Hare v. L. and N. W. R. Co.*, 30 Law J. (Ch.) 836; 2 Johns. & Hemm. 80; *Filder v. London, Brighton and South Coast R. Co.*, 1 Hemm. & M. 489; and see per Kindersley, V. C., in *Hattersley v. Earl of Shelburne*, 31 Law J. (Ch.) 873.

Acquiescence.

And if a shareholder neglects to apply for relief against any proceeding of the company, which is in excess of their powers, as soon as he is acquainted with the proceeding, he cannot afterwards obtain relief, at all events by injunction, because he will be deemed to have acquiesced in the steps taken (*k*).

Hare v. London and North Western R. Co.

In *Hare v. L. and N. W. R. Co.* (*l*), Wood, V. C., thus classified the cases in which Courts of Equity interfere as between the shareholders and the company:—

“This Court, in dealing between the shareholders and the company, has usually three classes of cases called to its attention; namely, the class of cases in which the directors are doing something *ultra vires* of the directors, *quà* directors, but still within the power of the company as a body; and in those cases the Court has said, we will not interfere as in the case of *Foss v. Harbottle* (*m*), because, though they may be wrong to-day, the majority of the company may say they are right to-morrow. Then there is the class of cases where the whole company united has not the power to do the acts, either as regards the individual shareholders or as regards the public interest, or both. As regards the individual shareholders, take the case of applying part of the monies of the company for soliciting a new bill. It has been held, that you cannot apply any of the monies of the company to the obtaining of a new bill because the shareholder has contracted to belong to a given company for a given object, and has not contracted to do more. I think it would be difficult to say the public, as distinguished from the shareholder, has any interest at all in that; probably the Attorney-General might interfere, but I can scarcely see the ground for public interference.

“Then there is the other class of cases, where you are applying the capital of the company to an enterprise in which you are not entitled to speculate as a corporate body, without being liable to the consequences incident to individuals who speculate; and that is the case of the Great Northern Railway Company carrying coals (*n*). In those cases where the public has an interest, the shareholder also has an interest: he of course has the same interest, or an interest in a higher degree, than in the case put of the money being applied to the passing of an act of Parliament extending his enterprise; and he may, as well as the Attorney-General, sue, and may sue with or without the Attorney-General, as he may be minded; and the Court there is in the habit of saying that it will interfere on behalf of one of the shareholders without much scruple as to his motive.”

6. *The Jurisdiction of the Courts to prevent Directors from exceeding their Powers.*

General principles.

The general principles upon which Courts of Equity will interfere, upon the application of shareholders, to prevent railway directors from exceeding the powers entrusted to them by the legislature, may now be considered to be perfectly well settled, though, as we shall

(*k*) *Graham v. Birkenhead Junction R. Co.*, 2 Macn. & Gord. 160; 20 Law J. (Chan.) 445; *Ffooks v. South Western R. Co.*, 1 Sm. & Giff. 142; *Hare v. L. and N. W. R. Co.*, *supra*.

(*l*) 30 Law J. (Chan.) 829; 2 Johns. &

Hemm. 80.

(*m*) Ante, p. 58.

(*n*) *Attorney-General v. Great Northern R. Co.*, 29 Law J. (Chan.) 794; 1 Dr. & Sm. 154; post, p. 66.

presently see, considerable difficulty has arisen, and must hereafter arise, in applying those principles to the circumstances of particular cases, especially those which approach the boundaries of what is or is not lawful.

The great principle which governs all these cases is this—that a railway company is a corporation established for a particular purpose, and the directors have no power to bind the corporation by entering into contracts for purposes foreign to the purposes for which the corporation was established; such contracts are *ultra vires*, and illegal (*o*).

The powers of a railway company are limited to the purposes for which it is established.

This principle, however, still leaves unsettled a question of almost still greater importance and difficulty, the question, namely, what is or is not foreign to the purposes for which the company was established. In extreme cases this question is easy of solution; but, as in other questions of degree, as we approach the confines of rectitude our difficulties increase, till we find it impossible to lay down a rule applicable to all cases (*p*). In each case, therefore, the question must be determined by the Court taking into consideration the acts of Parliament constituting the company, and other peculiar surrounding circumstances.

But let us consider the general principle. In an early case upon the subject (*q*), Lord Langdale, M. R., said—

Colman v. Eastern Counties R. Co.

“To look upon a railway company as in the light of a common partnership, and to be subject to no greater vigilance than common partnerships may be, would be greatly to mistake the functions which they perform, and the powers which they exercise, of interference with the public and private rights of all individuals in this realm. We are to look upon those powers as given to them in consideration of a benefit, which, notwithstanding all other sacrifices, is on the whole hoped to be obtained by the public, but the public interest being to protect the private rights of all individuals, and to save them from liabilities beyond those which the powers given by the several acts necessarily occasion, they must always be carefully looked to; and I am clearly of opinion, that the powers which are given extend no further than is expressly stated in the act, or necessarily and properly required, for the purposes which the act has sanctioned. How far those powers, which are necessarily or conveniently to be exercised for the purpose intended by the act, may extend, will very often be a subject of great difficulty. We cannot always ascertain what they are. Powers ample are given, for the purpose of constructing the railway—powers ample are given for maintaining the railway—powers ample are also given for doing all those things which are required for the proper use of the railway; but it has nowhere been stated that a railway company have power to enter into all sorts of transactions. Indeed, it is admitted, that they have not a

(*o*) In *Green v. Nixon*, 27 Law J. (Chan.) 823, Sir J. Romilly, M. R., said, “The principle upon which this Court grants injunctions to restrain directors from pursuing objects at variance with the original scope of the company, would seem to imply that they would bind the assets and the shareholders of the company, and it is this

which gives the shareholder so strong an interest to prevent the directors from misapplying the funds of the company.”

(*p*) See what is said by Erle, C. J., in *Mayor of Norwich v. Norfolk R. Co.*, 4 E. & B. 414, et seq.

(*q*) *Colman v. Eastern Counties R. Co.*, 10 Beav. 1; 16 Law J. (Chan.) 73.

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right to enter into new trades, not pointed out by the act. But it is contended, that, without limit, they have a right to pledge the funds of the company, for the encouragement of other transactions, however various and however extensive, provided only they profess that that encouragement, being occasioned by the liability of their own shareholders, the object of that liability is to increase the traffic upon the railway, and thereby to increase the profit to the shareholders. Surely, that has nowhere been stated; there is no authority for anything of that kind. What has been stated is, that these things to a small extent have frequently been done since the establishment of railways. Be it so;—but unless those acts so done can be proved to be in conformity with the powers given by the acts of Parliament under which those acts are done, they furnish no authority whatever”(r).

Salomons v. Laing.

And in another case the same learned judge said—

“From a very early period, it has been the practice of the Court of Chancery to confine the use of partnership monies to the purposes for which they are held, and the same principle must be applied to the transactions of railway companies. These companies are invested with powers for a specific object, and they are therefore bound to apply all their monies and property for the purposes directed and provided for by the act of Parliament, and not for any other purpose whatever. When the expenses are paid, and the public purposes directed and provided for by the act are fully performed, any surplus which may remain, after setting apart the sum to answer contingencies, may, if not applied in enlarging or repairing the works, be divided among the shareholders. The dividends which belong to the shareholders, and are divisible among them, may be applied by them severally as their own property, but the company itself, or the directors, or any number of shareholders assembled at a meeting or otherwise, have no right to dispose of the shares of the general dividend which belong to the particular shareholder, in any manner contrary to the will, or without the consent or authority of that particular shareholder. Any application of or dealing with the capital, or any part of the capital, or any funds or money of the company, which may come under the control or management of the directors or governing body of the company, in any manner not distinctly authorized by the act of Parliament, is an illegal application, and if the directors should attempt to expend the funds of the company for purposes not authorized by the act of Parliament, so as to involve the shareholders in liabilities to which the shareholder, or any of the shareholders, never consented, relief will be given in equity”(t).

Illustrations of the principle.

In accordance with these principles, an injunction was granted to restrain the directors of a railway company from entering into contracts, or applying funds belonging to the company in making payments in pursuance of contracts, of indemnity, which were about to be given by the directors to a steam-packet company, who proposed to establish a line of passenger ships in communication with the railway(u). So it is unlawful, and a breach of trust, if the directors,

(r) *Colman v. Eastern Counties R. Co.*, 16 L. J. (Ch.) 73; 10 Beav. 1; *Carlisle v. South Eastern R. Co.*, 2 Hall & Twells, 366; 19 Law J. (Chan.) 477; 6 Railw. C. 670.

(t) *Salomons v. Laing*, 19 Law J. (Chan.) 225.

(u) *Colman v. Eastern Counties R. Co.*, ubi supra. But in *South Wales R. Co. v.*

Redmond, 10 C. B., N. S. 675, it was held to be lawful for the plaintiffs to make a contract with the defendant to provide steamers, for the accommodation of the traffic between Milford Haven, Dublin, and Cork. And where a railway company was bound to keep up steam-vessels for the purposes of a ferry, it was held that

without any authority from Parliament, subscribe for or purchase shares in another railway (x).

In another case an injunction was granted, on the application of a shareholder, to restrain the directors of a railway company from expending any portion of the capital, in promoting a bill in parliament for improving a navigation upon which the railway company were empowered to erect wharfs and warehouses; although it was admitted that it would have been very beneficial and advantageous to the company, that the navigation should be improved in the manner proposed by the bill. And Lord Langdale, M. R., said, that although the question had never been before the House of Lords (y)—so far as the power of the Court of Chancery had extended, it had unalterably decided, that companies possessed of funds, for objects which are distinctly defined by act of Parliament, cannot be allowed to apply them to any other purpose whatever, however beneficial or advantageous it might appear, either to the company or to individual members of the company (z). So, on the application of a shareholder, an injunction was granted by Sir J. Romilly, M. R., to prevent directors from applying any funds in their hands towards the payment of the costs of a bill then in Parliament, by which it was sought to alter the rights of existing shareholders (a).

It makes no difference that the misappropriation of the funds will be beneficial to the company.

Upon similar principles it was held by the House of Lords (b), reversing a decision of the Court of Sessions in Scotland, that a railway company was not liable upon an agreement entered into by the projectors of it to contribute funds for constructing and enlarging a pier and harbour.

So again, upon an information filed at the relation of a shareholder

those steamers, when not employed for the ferry, might be used for excursion trips, and were not bound to remain idle when not wanted for the ferry. *Forrest v. Manchester, Sheffield and Lincolnshire R. Co.*, 30 Beav. 40, aff. on appeal by L. C., July, 1861.

(x) *Salomons v. Laing*, 12 Beav. 339; 6 Railw. Cas. 289; 19 Law J. (Chan.) 291. And where the promoters of a railway company signed the subscription contract, for sums which they represented to parliament as out of their own funds, but which in fact they had borrowed, and afterwards sought to charge against the funds of the company, the Court of Chancery, at the instance of a shareholder, granted an injunction to restrain any such application of the funds. *Spackman v. Lattimore*, 3 Giff. 16.

(y) It has since, vide infra, note (b).

(z) *Munt v. Shrewsbury and Chesler R. Co.*, 20 Law J. (Chan.) 169; *Attorney-General v. Andrews*, 19 Law J. (Chan.) 197; 14 Jurist (Chan.) 905; S. C. on ap-

peal, 2 Macn. & Gord. 225; *Attorney-General v. Corporation of Norwich*, 16 Sim. 225; 21 Law J. (Chan.) 139.

(a) *Stevens v. South Devon R. Co.*, 20 Law J. (Chan.) 491; In *Re St. George Steam Packet Co.*, 21 Law J. (Chan.) 593, Lord Truro, C., on appeal, disallowed, under the Winding-up Acts, a bill of costs due to the solicitor of a joint-stock company, incurred in procuring the insertion into a bill, then before parliament, of certain clauses applicable to the affairs of the company. This decision was founded on the principle, that a company have no implied authority to incur expenses not provided for by the terms of the deed which regulate their affairs. See also *Ex parte Cropper*, 1 De Gex, M. & Gord. 147; 16 Jur. 183, and post, p. 71.

(b) *Caledonian and Dumbartonshire R. Co. v. Helensburgh Harbour Trustees*, 2 M'Q. 391, and see post as to the effect of agreements by promoters to bind company afterwards incorporated.

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against a railway company (c), alleging that they bought and sold coal for profit, Sir R. Kindersley, V. C., granted an injunction to restrain the company from acting as coal dealers, and in giving judgment observed—

“An act of Parliament which constitutes a joint-stock company, (say a railway company,) may be for many purposes regarded as a contract with the public. It is true that it is a contract carried into effect through the medium or machinery of an act of Parliament, but it is in effect a contract between the promoters of that company and the public, and the company are bound by that contract; and although the act of Parliament which constitutes and incorporates the company contains no prohibition in express terms against engaging in any business, except that of making, and maintaining, and using the railway, there is implied in every such act of Parliament a prohibition, or (looking at it as a contract) a contract against ever engaging in any other business than that of a railway company. It is clear that that is the rule of law in the absence of any negative provision whatever prohibiting the dealing in any other matters; and that principle has been acted on over and over again. It is acted on constantly as between the different shareholders in the company. A single shareholder,—even if 599 out of 600 shareholders agreed to carry on a different business in addition to the railway business, and it was clearly for the benefit of the company, and if it was clear that they had made enormous profits from doing it, and were continuing to derive those profits,—a single shareholder has the right to say—‘That is not our contract amongst ourselves,—you shall not do it;’ and he may come and get an injunction.”

His Honor then observed, with reference to some of the observations made by counsel in argument—

“That it is perfectly immaterial what is the motive of the party in coming. In the case of *The Eastern Counties* (d), at the Rolls, where the company were engaged in establishing packets to trade from Harwich to the continent, I think a single individual, or one or two individuals, came: and it was proved to demonstration, that they were persons who had actually bought their shares in the railway company for the purpose of preventing this, because they belonged to some rival steam-packet company. But the motive has nothing to do with the matter; it is against law; it is against the contract between the shareholders; and it is against the contract which is made between the public and the company, when the company is incorporated for the purpose of carrying on their business as railway carriers. It is therefore illegal, and in effect, though not in terms, prohibited by the law to a railway company.”

Hattersley v. Earl of Shelburne.

And where an agreement provided for a number of things to be done, which were all for the purpose of accomplishing a certain object that was *ultra vires*, it was held by Kindersley, V. C., that the parties had no right by virtue of that agreement, until they had obtained the authority of Parliament, to do even those acts which, independently of the agreement, they did not require the authority of Parliament to do. But in granting an injunction to this extent, the V. C. refused to restrain two directors appointed under the agreement from

(c) *Attorney-General v. Great Northern R. Co.*, 29 Law J. (Chan.) 794; 1 Dr. &

Sm. 154.

(d) 10 Beav. 1; ante, p. 63.

acting, on the ground that the shareholders had power to remove them, and that restraining them might be detrimental to the business and interests of the company (e).

Where an agreement entered into by directors is partly illegal, the shareholders have a right to have it set aside so far as it is *ultra vires* (f).

And if an act is granted for the making of one entire line of railway, the company cannot abandon one portion of the line altogether, and expend the capital subscribed in making so much of the railway as they propose to complete. The rule is, that the obligation to complete the work is co-extensive with the authority to make it. No authority is given to substitute a less work, or part of the whole, and it is therefore unlawful to apply the capital collected on the faith of the whole work being completed, in completing only a part of it (g). So, when a company had powers to construct several branch and extension railways, and to raise certain distinct sums for each work, and the directors, having abandoned one portion of the railway, proposed to use a portion of the capital raised for the abandoned works, for the purposes of the other works, Lord Cottenham, C., said he was clearly of opinion that the shareholders, who subscribed their money for the purposes of the entire undertaking, were entitled in equity to the interposition of the Court, for the purpose of restraining the company from so applying the money. And an injunction was granted (h).

The obligation to complete a railway is co-extensive with the authority to make it.

It is clear, therefore, that a company have no right to engage or pledge their funds, or entangle their affairs, in unauthorized transactions, so as to place the existing funds in jeopardy; nor may they do so on the speculation that they may afterwards obtain parliamentary authority for doing acts which were unlawful at the time they were done (i).

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(e) *Hattersley v. Earl of Shelburne*, 31 Law J. (Chan.) 873.

(f) *Maunsell v. Midland R. Co.*, 32 L. J., Ch. 513; 1 Hemm. & Mill. 130.

(g) Per Lord Langdale, M. R., *Cohen v. Wilkinson*, 1 Macn. & Gord. 481; 18 Law J. (Chan.) 378; on appeal, 14 Jur. 491. But where a railway company were authorized to make a line with branches, and they completed a portion of the line, but abandoned other parts of it, this is not a public mischief which entitles the Attorney-General to file an information, to prevent the company from opening the portion of the line which is completed, until the whole is perfect. *Attorney-General v. Birmingham Junction R. Co.*, 16 Jurist, 113.

(h) *Bagshaw v. Eastern Union R. Co.*, 7 Hare, 114; 19 Law J. (Chan.) 410; 6 Railw. Cas. 152. But in *Hodgson v. Earl Powis*, 12 Beav. 392; 19 Law J. (Chan.) 418, Lord Langdale, M. R., intimated that

if the thing sought to be done, although illegal, would be nevertheless beneficial to the purposes which parliament had intended, and also to the parties, he should be disinclined to grant an injunction. See also *S. C.* on appeal, 21 Law J. (Chan.) 17, where Lord Cranworth, L. J., expresses a similar opinion. But in *Caledonian and Dumbartonshire R. Co. v. Helensburgh Harbour Trustees*, 2 M'Q. 418, Lord Cranworth, L. C., said, "The question is not whether it will be beneficial, but whether it will be beneficial in the mode sanctioned by the act." When acquiescence in the proceedings of the directors will bar shareholders from applying for an injunction, see *Graham v. Birkenhead Junction R. Co.*, 2 Macn. & Gord. 160; 20 Law J. (Chan.) 445; *Hodgson v. Earl of Powis*, 21 Law J. (Chan.) 17.

(i) *Logan v. Earl of Courtown*, 20 Law J. (Chan.) 347; and what the directors cannot do after the formation of the company,

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It is also unlawful for a company, without authority from Parliament, to delegate its powers to another company. Thus, where a company had proceeded to a certain extent in making a railway, and being then in want of funds, they entered into an agreement with another company, that, when the line was completed, it should be worked by that company, who should have perfect control, and exercise all the rights of the original company for twenty-one years, and find stock and work the concern,—Lord Cranworth, V.C., held that this agreement was illegal, and restrained the parties from carrying it into execution (*k*). His Lordship decided this case, on the ground that it was not competent for a company, who had obtained parliamentary powers, to delegate these powers to another company; and this principle is now clearly established by later decisions. Thus, upon an application for an injunction to restrain a company from obstructing the engines of another company from passing on the line of the defendants' railway, upon the ground that the latter had, by agreement, given the plaintiffs a right to run their trains on the defendants' railway, and to use their stations and other conveniences, and it being necessary, in support of the plaintiffs' case, to refer to an agreement between the plaintiffs and a third company, which gave the plaintiffs certain rights over a line of railway adjacent to the defendants' railway, Sir G. Turner, V.C., refused the injunction, on the ground that the latter agreement was illegal. There lies, said that learned judge, at the root of this case, a question of public policy, which precludes the interference of the Court. It is impossible to read the agreement between the plaintiffs and the East Anglian Co. without being satisfied that it amounts to an entire delegation to the plaintiffs of all the powers conferred by Parliament upon the latter company. All the stock of that company is to be taken by the plaintiffs, without any obligation to restore it. The plaintiffs are to manage and regulate the railways of the East Anglian Co., for the purposes of the agreement; and, although in form it is declared that the instrument shall not operate as a lease or agreement, it amounts in substance either to one or the other. It is framed in total disregard of the obligations and duties which attach to these companies, and is an attempt to carry into effect, without the intervention of Parliament, what cannot lawfully be done, except by Parliament in the exercise of its discretion, with reference to the interest of the public (*l*).

certainly the provisional directors cannot do before for the purpose of binding the company. *Caledonian and Dumbartonshire R. Co. v. Helensburgh Harbour Trustees*, ubi supra; *Leominster Canal Navigation v. Shrewsbury and Hereford R. Co.*, 26 Law J.

(Chan.) 764.

(*k*) *Beman v. Rufford*, 1 Sim., N. S. 556; 20 Law J. (Chan.) 537; 7 Railw. Cas. 48.

(*l*) *Great Northern R. Co. v. Eastern Counties R. Co.*, 9 Hare, 309; 21 Law J. (Chan.) 837.

So where by an agreement the L. and N. W. R. Co. agreed for a term of ninety-nine years to work the lines of the Birkenhead Co., using the property and plant of the latter company, except certain specified lands, and the said company were also to fix the fares and rates of charge, and the L. and N. W. Co. were to be allowed a certain specified sum for working expenses, and at the termination of the agreement the property and plant were to be restored of the same working value; and there was also a stipulation that a joint committee should be appointed, but not to exercise powers inconsistent with the acts of Parliament of the respective companies; Sir J. Parker, V.C., decreed that this agreement was not within the power of either of the companies, inasmuch as it was impossible that it could be carried out, without delegation or transfer to the L. and N. W. Co. of some at least of the duties and powers which were given exclusively to the other company; and that although the B. Co. were not called upon to be carriers, nevertheless the working the line was a duty imposed upon them by act of Parliament. The B. Co. had therefore agreed to part with statutory powers, which they had no authority to part with, and to a body which, by their constitution, had no authority to accept them (*m*).

A railway company may not by agreement delegate its powers to another company.

Winch v. Birkenhead R. Co.

In another case on this subject, the facts were, that by an agreement, the Great Northern Co. undertook to bear harmless the Ambergate Co. against all liabilities, whether of canals or otherwise; and that, until they could procure an act of Parliament enabling them to work the Ambergate traffic on their own account, they would work such traffic under the agreement, and pay the Ambergate Co. such tolls as would, after answering all expenses and liabilities, furnish a certain specified dividend upon the capital of the Ambergate Co., and as soon as an act should be obtained, the Great Northern Co. undertook to guarantee a certain dividend on such capital. It was part of the agreement that the Great Northern Co. should apply for an act of Parliament to ratify the agreement. The Great Northern Co. was also to have the privilege of paying off the Ambergate shareholders at par, at any time after obtaining the act, those shareholders being relieved from any further call. A special general meeting of the Ambergate Co. had confirmed this agreement. Under these circumstances the plaintiffs, ten shareholders in the Ambergate Co., applied for an injunction, first to restrain the directors of the Great Northern Co. from applying their funds in payment of the liabilities of the Ambergate Co.; secondly, from making any payments to the Ambergate Co., so as to make up a dividend on their capital; and thirdly, from applying any of their

Simpson v. Denison.

(*m*) *Winch v. Birkenhead R. Co.*, 16 Jurist, 1035; 5 De Gex & Sm. 562; 7 Railw. Cas. 384.

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funds in making application to Parliament for an act to ratify the arrangement complained of, and also from pledging the credit of the Great Northern Co. for carrying out the arrangement. The authorities we have already referred to were cited in argument, and Sir G. Turner, V.C., adopted these decisions, and said:—

“The first question is, what is the general principle which ought to be applied to cases of this nature? I take that point to be well settled. The principles which are to govern cases of this description between large companies, are the principles which regulate the rights of parties in ordinary partnerships. It must be considered, therefore, how this case would have stood if this had been an ordinary limited partnership. Here these companies have been formed for special purposes; that is, for the purpose of making railways between particular places, with power to carry passengers and goods between those places. In the case of an ordinary partnership formed for this purpose, I take it to be quite clear, that no majority of the partners could by any means bind the minority to make a railway, or to carry upon a railway between other and different places. Suppose a contract between a limited number of persons to trade between London and Oporto: I think it is quite clear that it would not be competent to any majority of partners to bind the minority to trade between London and Lisbon, although embarking in the same kind of trade, and in the same geographical direction. Again: suppose a number of persons agreed to horse a coach to run between London and Bath, it is quite clear that a majority of those persons could not bind the minority to horse it between Bath and Exeter. Then, I think, if the case rested there, I should feel little or no doubt on the subject; but it is the duty of the Court, in applying these principles, to consider all the terms of this particular partnership. (His Honor read 8 & 9 Vict. c. 20, s. 87, which had been referred to in argument(*n*).) The clause, in my opinion, gives a right to agree for leave to pass over another line with the ordinary incidents; but this is not saying that the clause gives a right, under colour of passing over, to acquire the whole trade of the company, over whose line such a passage takes place. The question therefore is, whether this is a *bond fide* agreement for ‘passing over’ the Ambergate line on terms within the meaning of the 8 & 9 Vict. c. 20, or whether it has been entered into for other purposes, i. e. for the purpose of acquiring the trade of the Ambergate Co.; and there is no doubt in my mind, on the agreement itself, but that it was entered into with this latter and more general view. Nor is the agreement in other respects within the act. The payment here agreed to be paid is not a toll within the meaning of the act. Tolls are defined to be ‘dues receivable for the liberty of passing over highways, public or private.’ They are payments connected with the passing over. It is difficult to know what was the meaning of the word ‘tolls,’ as used in the 87th section of the act. It is not necessary to decide what are ‘tolls’ as the word is used in the act: it is sufficient for my decision that these payments are not ‘tolls’ within the act(*o*). I must therefore grant the injunction, as to the first and second branches, qualified, however, as to the first branch, in a limited manner.

“As to the third branch of the injunction, to restrain the defendants from applying their funds in payment of the expense of any application to Parliament, the case cited of *Ware v. Grand Junction Waterworks Co.* (*p*), makes no distinction between applying to Parliament for the purpose of altering the scheme and objects of the

(*n*) 8 & 9 Vict. c. 20, s. 87, post, Appendix.

(*o*) See on this point *South Yorkshire R. and River Dun Co. v. Great Northern R. Co.*,

9 Exch. 55, 642; 22 Law J. (Chan.) 761; 3 De Gex, M. & Gord. 576.

(*p*) 2 Russ. & M. 470.

company, and defraying the costs of such application out of the funds of the company. But later cases have established the distinction, and it is clearly a distinction well founded in reason and sense. The injunction must therefore be granted as to this branch also of the application, but it must be confined to the proceedings on the agreement. That will leave untouched the injunction restraining the defendants from pledging the credit of the company" (q).

A railway company may not by agreement delegate its powers to another company.

There have also been a great number of cases at law, which have been decided upon principles similar to those which have governed the decisions in equity, which we have just been considering. But, inasmuch, as in the cases at law, the question has arisen between *third parties* and railway companies, and the decisions in those cases have consequently been influenced by considerations which do not apply to cases in which the question arises between shareholders and directors,—which are analogous to questions between partners *inter se*,—it is thought sufficient, in this place, to refer generally in a note to the cases at law (r).

Cases at law.

But it would seem to be the better opinion, after great litigation and prodigious difference of opinion amongst some of the most eminent judges, that arrangements made between railway companies, for regulating the traffic and dividing the profits of their respective railways, are not illegal (s).

Traffic arrangements.

And although the funds belonging to a company may not be devoted to other purposes than those for which they are raised, it is not illegal for a company to apply to Parliament, to vary the constitution or objects of the company, or to obtain powers to control its proceedings, as Parliament shall think fit, although a minority of its

But it is not unlawful to apply to Parliament to vary the constitution of a company, or to obtain new powers.

(q) *Simpson v. Denison*, 10 Hare, 51; 16 Jurist, 828; see post.

(r) *East Anglian R. Co. v. Eastern Counties R. Co.*, 11 C. B. 775; 21 Law J. (C. P.) 23; 16 Jurist, 249; 7 Railw. Cas. 150; *Gage v. Newmarket R. Co.*, 18 Q. B. 457; 21 Law J. (Q. B.) 398; *McGregor v. Dover and Deal R. Co.*, 18 Q. B. 618; 22 Law J. (Q. B.) 69; *South Yorkshire R. and River Don Co. v. Great Northern R. Co.*, 9 Exch. 55, 642; *Mayor of Norwich v. Norfolk R. Co.*, 4 E. & B. 397; *Bostock v. North Staffordshire R. Co.*, 4 E. & B. 798; 25 Law J. (Chan.) 325; *Bateman v. Mayor, &c. of Ashton*, 27 Law J. (Exch.) 458; 3 H. & N. 323. See *Hawkes v. Eastern Counties R. Co.*, 22 Law J. (Chan.) 77; 5 House of Lords Cases, 381; *National Exchange Co. of Glasgow v. Drew*, 2 M'Q. 103.

(s) *Shrewsbury and Birmingham R. Co. v. L. & N. W. R. Co.*, 2 Macn. & Gord. 324; 8 C. 2 Hall & Tw. 257; 3 Macn. & Gord. 70; 17 Q. B. 652; 16 Beav. 441; 4 De Gex, M. & Gord. 115; 6 House of Lords Cases, 113; 20 Law J. (Chan.) 90; 21 Law J. (Q. B.) 89; 22 Law J. (Chan.) 682; 26 Law J. (Chan.) 482; *Hare v. L. & N.*

W. R. Co., 2 Johns. & Hemm. 80; 30 Law J. (Chan.) 817. These cases are of great importance and will well repay perusal by any one interested in traffic arrangements between rival companies. See also as to traffic arrangements, 26 & 27 Vict. c. 92, s. 22, post, Appendix. Where a statute authorized an arbitration between two companies, to regulate the mode in which their traffic should be conducted for their mutual accommodation, an award was held good, which directed at what speed trains should travel, and the times of their departure. Under such a clause, a notice for fresh arbitration may be given from time to time. *Eastern Union R. Co. v. Eastern Counties R. Co.*, 2 E. & B. 530; 22 Law J. (Q. B.) 371. In a case in which an agreement was made between two companies for the use of the line and stations of one of them, and the other company subsequently greatly extended their lines, it was decided in error, overruling the decision below, that the right extended to all traffic going to any station on the new extension lines. *East Lancashire R. Co. v. Lancashire and Yorkshire R. Co.*, 9 Exch. 591; 25 Law J. (Exch.) 278.

Applications to Parliament to vary the constitution or objects of a company not illegal.

shareholders may be opposed to such application (*t*), *provided no attempt be made to pledge the funds or the credit of the company, to meet the consequent expenses* (*u*). It seems, therefore, that if persons connected with a company come forward with sufficient funds to defray the expenses of intended applications to Parliament, there is nothing illegal in the transaction, and equity would not interfere to prevent the company from proceeding with such applications. It is apparent that in many cases it would be the duty of the directors of a railway company to prosecute or oppose bills in Parliament (*x*), with a view to meet applications made by other companies, seeking powers, which, if obtained, would prove adverse to the interests of the shareholders of the company which they represent; and the courts of law and equity will not disapprove of arrangements which may be advantageous to a particular company, or which may be mutually advantageous to rival companies, and at the same time cause no inconvenience or loss to the public. Thus we have seen that, on the application of a shareholder, an injunction was granted by Sir J. Romilly, M. R., to prevent directors from applying any funds in their hands towards the payment of the costs of a bill then in Parliament, by which it was sought to alter the rights of the existing shareholders (*y*); but the learned judge refused to extend the injunction so far as to restrain the directors from proceeding with the bill altogether, as he was not of opinion that the nature of the case was such as to make an application to Parliament, for the purpose of authorizing the scheme, a breach of trust or of duty by the company (*z*). So where the Great Western R. Co. had contracted with another company, to take an interest in their undertaking, and the directors of the latter subsequently determined to apply for a bill in Parliament which, if carried, would be very unfavourable to the interests of the Great Western Co., Sir J. Parker, V. C., upon an application for an injunction to restrain the company from soliciting the bill in Parliament, or any other bill for the like purpose, granted the injunction

(*t*) That was the reason of having the Wharncliffe order, ante, p. 31.

(*u*) In *Maunsell v. Midland R. Co.*, 32 L. J., Ch. 513, Wood, V. C., said:—"No doubt it is lawful for them to apply for a bill, but it is not lawful to expend one sixpence of the funds in procuring it." In that case the Vice Chancellor expressed an opinion that it was illegal for the company to covenant with a third party to apply to Parliament, since it would thereby render its funds liable in the event of its not applying.

(*x*) In *Mozley v. Alston*, 16 Law J. (Chan.) 227, Lord Cottenham, C., observed to counsel, in argument:—"There is scarcely a railway company in the kingdom which does not come to Parliament for extension

of powers. If a single shareholder may come here at the beginning of the session, for an injunction to restrain such applications to Parliament, it would engross the whole time of this Court."

(*y*) *Stevens v. South Devon R. Co.*, 13 Beav. 48; 20 Law J. (Chan.) 491; 15 Jur. 235, ante, p. 65.

(*z*) Ibid. 494. See also *Parker v. River Dunn Navigation Co.*, 1 De Gex & Sm. 192. Whether the funds of the company may be used in opposing bills in Parliament which would tend, if passed, to interfere with the traffic on the railway, or do other injury, see *Brighton v. North*, 2 Ph. 216; S. C. 16 Law J. (Chan.) 255; *R. v. Norfolk Commissioners*, 15 Q. B. 549; S. C. 20 Law J. (Q. B.) 121.

so far as to restrain them from using the funds or pledging the credit of the company, in making the application to Parliament, but he said that there was nothing illegal in the object of the application to Parliament, assuming it to be legally pursued by the company (*a*). And in a subsequent case already noticed, Sir G. Turner, V. C., said, that the distinction between a company applying to Parliament for the purpose of altering the scheme and objects of the company, and the defraying the costs of such applications, out of the funds of the company, was well founded in reason and sense, and he moulded an injunction accordingly (*b*).

Applications to Parliament to vary the constitution or objects of a company.

This distinction and the origin of the rule itself are thus stated by Wood, V. C. (*c*), in granting an application by a shareholder for an injunction to restrain the directors from applying any of the funds of the East Lancashire R. Co. towards promoting a bill for a new line (from C. to B.), and also from issuing or allotting any new shares purporting to be shares in the existing undertaking of the East Lancashire R. Co., except for the purposes and under the powers of any existing act of Parliament, and from receiving any money in respect of such allotment.

Vance v. East Lancashire R. Co.

"I have no doubt of the power of an existing company to apply to Parliament for an extension of its line. But it is somewhat more than this if it applies the corporate funds to that purpose.

"What is called the Wharncliffe Order (*d*) arose out the proceedings before a Committee of the Lords on the Stockton and Darlington Railway Bill, one of the first in which I was engaged when at the bar. We succeeded in that case, notwithstanding *Natusch v. Irving* (*e*), on two grounds; first, because that case arose on a private partnership, not on an incorporated company; and secondly, because we showed that our application did not involve necessarily any misapplication of the corporate funds. Then Lord Wharncliffe proposed as a Standing Order of the House, that, before any such bill should pass the House of Lords in future, three-fifths of the shareholders (*f*) present at the meeting should consent to an application being made for such bill. I think no doubt has ever existed since that time that it is competent to the directors to apply from time to time to extend their line to other purposes wholly beyond that contemplated by the original act of incorporation, and that no resistance of any individual shareholder is of any avail, if the consent has been obtained which I have referred to.

"It afterwards came to be considered before this Court how far any part of the existing property of a corporation could be applied in payment either of preliminary expenses or of the expenses of passing a bill through Parliament. Mr. Bird (*g*) contended, that, if it was once admitted that the directors had power to come to Parliament for the act, all powers incidental to that must be inferred. It is quite clear that this is too large an inference, for instance, one of the most necessary con-

(*a*) *Great Western R. Co. v. Rushout*, 16 Jurist, 238; 5 De Gex & Sm. 290.

(*b*) *Simpson v. Denison*, 16 Jurist, 828; 10 Hare, 51.

(*c*) *Vance v. East Lancashire R. Co.*, 3 Kay & J. 50; and see ante, p. 72, note (*u*).

(*d*) L. S. O. clxxxv.; C. S. O. 66, ante,

p. 31.

(*e*) Gow on Partn. 398, 3rd ed.

(*f*) The orders require the consent of proprietors, holding at least three-fourths of the paid-up capital of the company, represented at such meeting.

(*g*) One of the counsel.

Applications to Parliament to vary the constitution or objects of a company.

sequences of applying for an act, viz. the incurring expense, is just what this Court will not permit. If they apply to Parliament for an act, the Court will not prevent them from so doing on the ground of dissenting shareholders objecting to it: but they are not permitted to apply any portion of the funds towards any part of the expenses necessary for this new purpose. They cannot divert the fund to any purpose other than those sanctioned by the existing act of the corporation.”

Power of companies to agree to an amalgamation.

In a case in which a suit was instituted in equity to enforce an agreement, whereby two existing companies agreed to amalgamate^(h) their undertakings with a third company, and it was objected that, as the special acts contained no powers to authorize such a contract, the agreement was a nullity: Lord Cottenham, C., said—

“I am asked to treat this contract as a nullity, that is, to hold that all contracts which parties enter into, not having themselves the power to carry them into effect, therefore agreeing to apply to Parliament to give them such powers, are so utterly void that this court will not even protect the property, until an opportunity shall be afforded for an application to Parliament. The effect of such a decision would be to nullify many family arrangements entered into—many with the sanction of this court, but to give effect to which the powers of Parliament are indispensable. It would also nullify all contracts by projectors of companies before their act is obtained; and it is now twelve years since ⁽ⁱ⁾, I gave effect, against the incorporated body, to a contract entered into by the projectors of it, before their act was passed, but in contemplation of its passing, and now there are many other cases to the same effect. I am, therefore, not prepared to say, that a contract so entered into and sanctioned, is to be treated as a nullity, because some of its provisions may require an act of Parliament to carry them into effect ^(k).”

In another case, where a railway company applied to Parliament for an act enabling them to take a lease of another railway, but the application being opposed by a rival company, on the ground that the proposed amalgamation would destroy the traffic then existing on the line of the objecting company, an agreement was made between the parties that the opposition should be withdrawn; that a mutual account of the traffic of the three companies should be kept, and the amount received be divided in certain proportions by the companies, and that the company taking the intended lease should not compete for any traffic which properly belonged to the other company, and thereupon the act of Parliament was obtained; and the conditions of the agreement not having been observed, Lord Cottenham, C., was of opinion that it could not be said that any fraud had been practised on Parliament, for it had often been decided

^(h) See the general clauses as to amalgamation in “The Railways Clauses Act, 1863,” 26 & 27 Vict. c. 92, s. 36, post, Appendix.

⁽ⁱ⁾ In *Edwards v. Grand Junction R. Co.*, 1 Myl. & Cr. 650; 6 Law J. (Chan.) 47. Doubts have, however, been thrown upon that case in the House of Lords; see *Preston v. Liverpool, Manchester and Newcastle*

R. Co., 5 H. L. C. 605; 25 Law J. (Chan.) 421; *Caledonian and Dumbartonshire R. Co. v. Helensburgh Harbour Trustees*, 2 M.Q. 391. The point involved in these cases is considered post, Chap. V.

^(k) *Great Western R. Co. v. Birmingham and Oxford Junction*, 17 Law J. (Chan.) 243; 5 Railw. Cas. 241.

that parties may come to a private arrangement between themselves as a ground for not opposing a bill; neither could it be objected that the companies had not full authority to enter into the stipulations contained in the agreement as to the regulation of the traffic (*l*). This case was finally sent by Lord Truro, C., to law, and the Court of Queen's Bench determined that there was nothing in the agreement contrary to the duty which the parties respectively owed to Parliament, or to the public, or to their own subscribers; as to the first point, it had been clearly settled that an agreement to withdraw opposition to a railway bill in Parliament for a pecuniary or other consideration, was not illegal; secondly, that it was not injurious to the public, by giving in effect a monopoly to one company, because the parties did not propose by their agreement to endeavour to prevent competition generally, but only that one company should not compete or interfere with the other, upon the particular line mentioned in the agreement, which was in effect the same as if two persons engaged in one trade should agree not to compete with each other, within a particular district; and as to the last point the stipulation to divide the profits might be greatly for the benefit of the shareholders, for without some such co-operation of the companies, perhaps no profit would be made (*m*).

Applications to Parliament to vary the constitution or objects of a company.

We shall have occasion hereafter—in treating on proceedings by mandamus and injunction, which properly belong to the subject we have been considering—to return to the investigation of the principles which have guided the Courts, in interfering with the contracts and proceedings of railway companies, whose transactions are daily becoming of greater magnitude and importance; and we shall find that, so far as they are applicable, the Courts have endeavoured to enforce the same rules for the regulation of their affairs, as belong to ordinary mercantile partnerships. If these rules are in any case insufficient for the due protection of the public interests, the proper remedy seems to be to appeal to the wisdom of Parliament for such legislative measures as may be necessary.

(*l*) *Shrewsbury and Birmingham R. Co. v. L. and N. W. R. Co.*, 2 Hall & Twells, 257; 20 Law J., Ch. 90; 2 Macn. & G. 324; 3 Macn. & G. 70.

(*m*) *Ibid.*; 17 Q. B. 652; 21 Law J. (Q. B.) 89; 16 Jur. 311. This case subsequently came before Sir J. Romilly, M. R., who said he was bound by the decisions to hold that the agreement was not illegal;

but he was of opinion, that, by the terms of the act, the agreement as to the grant and acceptance of a lease could not be enforced until the whole undertaking was completed. 16 Beav. 441. On appeal, however, the Lords Justices held the agreement *ultra vires*, 4 De G., M. & G. 115, and the House of Lords affirmed their decree, 6 H. L. C. 113.

7. *The Criminal Law applicable to Fraudulent Directors, &c.*

By the 24 & 25 Vict. c. 96, s. 80, it is enacted, that—

Trustees fraudulently disposing of property, guilty of a misdemeanor.

80. Whosoever being a trustee (*n*) of any property (*o*) for the use or benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same, or any part thereof, to or for its own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose as aforesaid, or otherwise dispose of or destroy such property or any part thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to [be kept in penal servitude for any term not exceeding seven years and not less than *five* (*p*) years, or to be imprisoned for any term not exceeding two years, with or without hard labour and with or without solitary confinement:] *provided* that no proceeding or prosecution for any offence included in this section shall be commenced without the sanction of her Majesty's Attorney-General, or, in case that office be vacant, of her Majesty's Solicitor-General: *provided also* that where any civil proceeding shall have been taken against any person to whom the provisions of this section may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this section without the sanction of the court or judge before whom such civil proceeding shall have been had or shall be pending.

Directors, &c., of any body corporate, or public company, fraudulently appropriating property,

81. Whosoever, being a director, member or public officer of any body corporate or public company, shall fraudulently take or apply for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property (*q*) of such body corporate or public company shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to any of the punishments which the court may award as hereinbefore last mentioned.

or keeping fraudulent accounts,

82. Whosoever, being a director, public officer or manager of any body corporate or public company, shall as such receive or possess himself any of the property of such body corporate or public company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

or wilfully destroying books, &c.,

83. Whosoever being a director, manager, public officer or member of any body corporate or public company shall, with intent to defraud, destroy, alter, mutilate or falsify any book, paper, writing or valuable security (*r*) belonging to the body

(*n*) By the interpretation clause, s. 1, the term "*trustee*," means a trustee on some express trust created by some deed, will or instrument in writing [see *R. v. Fletcher*, 31 Law J. (M. C.) 206], and includes the heir or personal representative of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor or administrator, and an official manager, assignee, liquidator or other like officer acting under any present or future act relating to joint stock companies, bankruptcy or insolvency.

(*o*) By same s. 1, the term "*property*" includes every description of real and personal property, money, debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and shall also include not only such property as shall have been originally in the possession or under the control of any party, but also any property into or for which the same may have been

converted or exchanged, and any thing acquired by such conversion or exchange, whether immediately or otherwise.

(*p*) See 27 & 28 Vict. c. 47, s. 2.

(*q*) Note (*o*), supra.

(*r*) By the interpretation clause, s. 1, the term "*valuable security*" shall include any order, exchequer acquittance or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund whether of the United Kingdom or of Great Britain or of Ireland, or of any foreign state, or in any fund of any body corporate, company or society, whether within the United Kingdom or in any foreign state or country, or to any deposit in any bank, and shall also include any debenture, deed, bond, bill, note, warrant, order or other security whatsoever for money, or for payment of money, whether of the United Kingdom or of Great Britain, or of Ireland, or of any foreign state, and any document of title to lands or goods; and the term "*document of title to lands*" shall

corporate or public company, or make, or concur in the making, of any false entry or omit, or concur in omitting, any material particular in any book of account or other document, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

84. Whosoever, being a director, manager or public officer of any body corporate or public company, shall make, circulate or publish, or concur in making, circulating or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein or to intrust or advance any property (s) to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned.

or publishing fraudulent statements,

guilty of a misdemeanor.

85. Nothing in any of the last ten preceding sections of this act contained shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any court or upon the hearing of any matter in bankruptcy or insolvency; and no person shall be liable to be convicted of any of the misdemeanors in any of the said sections mentioned by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first (t) disclosed such act on oath in consequence of any compulsory process of any court of law or equity in any action, suit or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any court upon the hearing of any matter in bankruptcy or insolvency.

No person to be exempt from answering questions in any Court; but no person making a disclosure in any compulsory proceeding to be liable to prosecution.

86. Nothing in any of the last eleven preceding sections of this act contained, nor any proceeding, conviction or judgment to be had or taken thereon against any person under any of the said sections, shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved by any offence against any of the said sections might have had if this act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him, and nothing in the said sections contained shall affect or prejudice any agreement entered into or security given by any trustee having for its object the restoration or repayment of any trust property misappropriated.

No remedy at law or in equity shall be affected.

Convictions shall not be received in evidence in civil suits.

87. No misdemeanor against any of the last twelve preceding sections of this act shall be prosecuted or tried at any court of general or quarter sessions of the peace.

Not triable at sessions.

8. Dividends.

It is to be remarked that dividends can only be declared out of profits, and it would be illegal to order a fictitious dividend (u). The

Dividends must be declared out of profits alone.

include any deed, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title or any part of the title to any real estate, or to any interest in or out of any real estate; and the term "*document of title to goods*" shall include any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to.

(s) Ante, p. 76, note (o).

(t) The word "first" was inserted in consequence of *R. v. Skeen*, Bell, C. C. 97; 28 Law J. (M. C.) 91, where several, but a minority, of the judges held, that a statement made before a commissioner of bankrupts was a "disclosure" within 5 & 6 Vict. c. 39, s. 6, although the same facts had been previously proved before a magistrate. Now, no disclosure but the *first* will avail.

(u) In *Burnes v. Pennell*, 2 House of Lords Cases, 497, Lord Campbell, C. J., says on this subject "I repeat that it is most nefarious conduct for the directors of a joint stock company, in order to raise the price of shares which they are to dispose of, to order a fictitious dividend to be paid out of the capital of the concern."

Dividends must be declared out of profits alone.

Companies Clauses Consolidation Act (8 & 9 Vict. c. 16, which is printed at length in the Appendix), provides that, previously to every ordinary meeting at which a dividend is intended to be declared, the directors shall cause a scheme to be prepared, showing the profits (*v*) (if any) of the company, for the period current since the preceding ordinary meeting, at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme: (Sect. 120.) No dividend may be made, whereby the capital stock will be in any degree reduced; but it is provided that the word "dividend" shall not be construed to apply to a return of any portion of the capital stock, with the consent of all the mortgagees and bond creditors of the company, due notice being given for that purpose at an extraordinary meeting to be convened for that object: (Sect. 121.) Before the profits are apportioned, the directors may set aside a sum to meet contingencies, or for enlarging, repairing, or improving the works: (Sect. 122.) No dividend is payable in respect of any share until the calls payable on all shares held by the owner thereof are paid: (Sect. 123.)

And by the Companies Act, 1863, it is specially provided that preference shares and stock issued under the authority of that act shall only be entitled to dividends out of the profits (*x*).

Dividends are supposed to be paid out of profits only, and when directors order a dividend to any given amount, without expressly saying so, they impliedly declare to the world, that the company has made profits which justify such a dividend. If no such profits have been made, and the dividend is to be paid out of the capital of the concern, a gross fraud has been practised, and the directors are not only civilly liable to those whom they have deceived and injured, but, in my opinion, they are guilty of a conspiracy, for which they are liable to be prosecuted and punished. There can be no doubt that a conspiracy by falsehood (as by a fictitious dividend), to raise fictitiously the market value of shares of a railway company, or any other joint stock company, that the Queen's subjects may be deceived and injured, and that at their expense a profit may be made by the conspirators, would be an indictable offence." Lord Brougham also remarked, "I view with the greatest severity the conduct of railway directors, in declaring dividends which can only be paid out of capital, because I consider that that is, of itself, a most vicious and fraudulent course of con-

duct. It is telling the world that their profits are large, when it may be their profits are nil, or that their losses are large, with no profits. It is a false and fraudulent representation by act and deed, much to be reprobated; and I go the full length of what my noble and learned friend has laid down, that it would be a just ground, if a course of conduct of this sort were pursued, coupled with such circumstances as clearly to show a fraudulent intent, for proceedings of a graver nature against these parties."

(*v*) Money borrowed by directors under the powers of their act is not payable out of the profits of the company; but debts incurred for rails, stations or the like, and debts which would have been paid at the time they were contracted if the company had held funds, are deductions to be made from profits, and are payable before the net profits can be ascertained, and before any division can be made among the shareholders. *Corry v. Londonderry and Enniskillen R. Co.*, 30 Law J. (Chan.) 290.

(*x*) 26 & 27 Vict. c. 118, s. 14, post, Appendix.

After a dividend has been declared, each party entitled has a separate and independent right to recover it, and therefore, where a railway act provided that no dividends should be paid until the whole of a railway was opened for traffic, Lord Cottenham, C., decided that one shareholder could not sustain a bill, filed on behalf of himself and all other shareholders, for an injunction to restrain the payment of a dividend declared before the opening of the whole line (*y*). And by analogy with a series of decisions, as to the right to recover dividends arising from the public funds, each shareholder would seem to have a right of action against the company, to recover a declared dividend (*z*).

Each shareholder has a separate and independent right to recover the dividend declared on his shares.

A lien on shares seems to give, as accessory thereto, a right to receive the dividends accruing therefrom (*a*). Shares in a railway company appear also to be within 1 & 2 Vict. c. 110, s. 14, and may therefore be charged with the payment of a judgment debt, by a judge's order (*b*); and by the 3 & 4 Vict. c. 82, the provisions of that act are extended to the dividends arising from such shares.

Lien on shares.

Charge on dividends by a judge's order under 3 & 4 Vict. c. 82.

The Apportionment Act (4 & 5 Will. 4, c. 22), has been held (*c*) not to apply to dividends on railway shares.

Apportionment of dividends.

In connection with the subject of dividends, we may observe that, in a case, where the shareholders of a railway company had resolved that a number of new shares about to be issued should be "at the disposal of the directors," Sir J. Romilly, M. R., decided that the chairman of the board was not justified in retaining for his own benefit the amount of the premiums for which such shares were sold, although the full amount of the calls were subsequently paid to the company, by the purchasers of the shares. The same learned judge expressed a doubt whether the shareholders could have even *expressly* authorized such an appropriation of the profits arising from these premiums (*d*).

York and North Midland R. Co. v. Hudson.

The rights of the holders of preference stock and guaranteed shares are well illustrated by the following cases:—

Rights of holders of preference stock and shares.

A railway company issued certificates of preference stock purporting to carry "interest" at 6*l.* per cent. per annum in perpetuity. Afterwards they obtained an act of Parliament, which (after reciting that preference stock had been created, whereby priority was assigned

Sturge v. Eastern Union R. Co.

(*y*) *Carlisle v. South-Eastern R. Co.*, 6 Railw. C. 670; 19 Law J. (Chan.) 477; 2 Hall & T. 366. Nor will the Court restrain a company from paying a dividend, on the mere ground that the directors have acted in violation of the duty they owe to the public. *Brown v. Monmouthshire R. Co.*, 20 Law J. (Chan.) 497.

(*z*) *Davis v. Bank of England*, 2 Bing. 393; *Feistal v. King's College, Cambridge*, 10 Beav. 491. When a married woman

may recover dividends, see *Dalton v. Midland R. Co.*, 13 C. B. 474.

(*a*) *Hague v. Dandeson*, 2 Exch. 741.

(*b*) It was doubted in *Graham v. Connell*, 19 Law J. (Exch.) 361, whether shares in a joint stock bank are within this act.

(*c*) By Wood, V. C., *Re Maxwell*, 32 Law J., Ch. 333; 11 W. R. 480; 1 Hemm. & Mill. 610.

(*d*) *York and North Midland R. Co. v. Hudson*, 16 Beav. 485; 22 L. J., Ch. 529.

in the payment of "dividends" to the extent of 6*l.* per cent. per annum,) enacted, that the railway company should pay "dividends" to the holders of such stock, at the rate aforesaid, before they should pay any dividend to the holders of any other shares in the company. By a subsequent act, the company was empowered to issue other shares, called "debenture shares," bearing "interest" at 5*l.* per cent. per annum; and was directed to apply the annual profits in payment first of interest on mortgages; secondly, of interest on the debenture shares; thirdly, of the "interest or dividend" on the guaranteed or preference shares, and the arrears of such interest or dividends; and fourthly, as therein mentioned. A subsequent act referred to the preference shares as bearing a "preferential interest or dividend." It was held by the Lords Justices, upon a bill filed by a holder of 6*l.* per cent. preference stock, that the provision as to payment of "dividends" in the first-mentioned act must be construed with reference to the recital in it and to the subsequent acts, and did not mean a share of current profits merely, but entitled the holders of the preference shares to resort to a subsequent division of profits, to make their dividend up to 6*l.* per cent. It was also held, that a preferential shareholder is entitled to file a bill to restrain the company from making a dividend prejudicial to his rights, without waiting until there are funds to make a dividend (*e*).

*Henry v. Great
Northern R. Co.*

The stock in the Great Northern R. Co. consisted of ordinary and preference stocks, the latter being created in pursuance of different acts of Parliament, and entitling the holders to preference dividends at different rates per cent. per annum. An officer of the company from time to time, during a period of some years, fraudulently issued fictitious stock of both kinds, which amounted in the whole to 220,000*l.* before the fraud was discovered. It not being possible to distinguish the genuine from the fictitious stock, an act of Parliament was obtained in 1857, by which the fictitious stock was declared valid; and it was enacted, that the directors should apply a sum of 243,000*l.*, which was applicable for profits up to December, 1856, in purchasing and cancelling stock equivalent to that which had been fraudulently created. It was then enacted, that it should be lawful for the directors to apply the balance of the 243,000*l.*, so far as the same would extend, in paying to the proprietors of the several classes of preference stock or shares the dividends to which they would have been entitled out of the said sum, if the same had been declared and apportioned as dividend, &c. The preference shareholders, not having received

(*e*) *Sturge v. Eastern Union R. Co.*, 7 De Gex, M. & Gord. 158. It is very doubtful indeed, if it is competent to railway companies to create preferential shares under the

general powers contained in ordinary Railway Acts. *Semble*, they cannot. *Ibid.*; see now 26 & 27 Vict. c. 118, s. 13, et seq., post, Appendix.

the full amount of their dividends in 1856, claimed to be paid the deficiency out of the first half-year's profits in 1857; but this claim was resisted by the directors and the ordinary shareholders; and thereupon a bill was filed to obtain an injunction to restrain the declaration of a dividend on the ordinary stock, without regard to the prior right of the preference shareholders to be paid the full amount of their dividend. And it was held by the full Court of Appeal (affirming a decision of Wood, V. C.), that the preference shareholders were entitled to the injunction, it being considered that the right of preference shareholders was to have the full amount of their respective dividends before any payment in respect of dividends on the ordinary stock, and that the Act of 1857 had not deprived them of that right (*f*). In giving judgment, Lord Cranworth, L. C., said, "I have come to the conclusion, that what these statutes in fact guarantee to the favoured shareholders is a charge on all accruing profits, at the stipulated rate, before any thing is divided among the ordinary shareholders. This is, substantially, *interest*, chargeable exclusively on profits. There is nothing in such a use of the word 'dividend' which is at all at variance with ordinary usage. We speak of the *dividends* payable on the £3 per Cents., when in truth we mean no more than an annuity of 3*l.* chargeable upon and payable out of the public revenue."

By an act of Parliament it was enacted, that it should be lawful for any shareholder, who should have paid up one-half the amount of any share or shares in the Great Northern R. Co., to require each share to be converted into two half shares, whereof the one-half which should be so fully paid up should be denominated "Deferred half-share;" and the other half of such share should be denominated "Guaranteed half-share;" and thenceforth, in respect of each whole share so divided, the whole of the interest and dividends which would in each year have accrued, should be applied in or towards payment in the first place of interest or dividend after the rate of 6*l.* per cent. per annum on the amount paid upon the half-share so denominated "guaranteed;" and the remainder, if any, should alone be payable to the half-share so denominated "deferred," provided that the company should not pay any other or greater amount of interest or dividend upon the two half-shares than was for the time being paid on each undivided share. It was held by Wood, V. C., that the holders of guaranteed half-shares were entitled to be paid their 6*l.* per cent. in each year, not only out of the dividends accruing in that year, but out of all subsequent dividends; and therefore, if in any year the

Deferred half-shares.
Guaranteed half-shares.
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Matthews v. Great Northern R. Co.

(*f*) *Henry v. Great Northern R. Co.*, 27 Law J. (Chan.) 1; 1 De Gex & J. 606.
See also *Corry v. Londonderry and Ennis-*

killen R. Co., 30 Law J. (Chan.) 290; 29 Beav. 263.

dividends were more than sufficient to pay 6*l.* per cent. on the guaranteed half-shares, the surplus must be applied in payment in the first place of all arrears due on those half-shares in respect of past deficiencies, before any dividend could be declared on the deferred half-shares. And it was also held, that the holders of the guaranteed half-shares having in a former year acquiesced in the declaration of a dividend on the deferred half-shares, whilst there was an arrear of dividend due on the guaranteed half-shares, although they had precluded themselves from making any claim in respect of those particular arrears, had not thereby renounced their rights in respect of subsequent arrears (*g*).

9. *The Accounts of the Company, and their Audit.*

The accounts of the company, and their audit.

With respect to the keeping the accounts of the company, the Companies Clauses Consolidation Act, (8 & 9 Vict. c. 16, which is printed at length in the Appendix,) requires the directors to cause full and true accounts to be kept of all matters and things for which monies have been received or paid: (Sect. 115.) The books must be balanced at the times prescribed by the special act, or, if no time be there prescribed, fourteen days at least before each ordinary meeting; and an exact balance-sheet must be made up, exhibiting a statement of the capital stock, credits, and property of the company, and the debts due by them, with a distinct view of profit and loss, on the preceding half-year: (Sect. 116.) The books and the balance-sheet are to remain open for the inspection of shareholders, at the office, for a time prescribed, before and after each ordinary meeting, and extracts may be taken (*h*); but at any other time the books cannot be inspected, unless by a written order signed by the directors: (Sects. 117, 119.) And at the ordinary meeting, the balance-sheet and report of the auditors must be produced to the shareholders: (Sect. 118.) A book-keeper must be appointed to enter the accounts and keep the books, and if he fails to permit them to be inspected by shareholders, he may be fined 5*l.*: (Sect. 119.)

Annual account of receipts and expenditure to be prepared for overseers.

An annual account of receipts and expenditure, certified by the directors and auditors, must also be prepared; and, if required, a copy must be transmitted to the overseers of the parishes, and clerks of the peace of the counties, through which the railway passes; and the public may inspect such account. A penalty of 20*l.* is incurred

(*g*) *Matthews v. Great Northern R. Co.*, 28 Law J. (Chan.) 375.

(*h*) Where a shareholder was sued for calls due on his shares, an application made by him to the Court, for an order to inspect the minute books of the company was re-

fused. *Birmingham and Thames Junction R. Co. v. White*, 1 Q. B. 282; S. C. 2 Railw. Cas. 863. As to when a bond creditor may examine the books of the company, see *Pontet v. Basingstoke Canal Co.*, 2 Bing. N.C. 370; S. C. 2 Scott, 543.

by the company, if, when required, they neglect to transmit such account: (8 & 9 Vict. c. 20, s. 107) (i).

The accounts of the company, and their audit.

Before any person is entrusted with the custody or control of money, the directors must take sufficient security from him (k): (8 & 9 Vict. c. 16, s. 109.) Every officer, when required, must render an account of all monies received by him, and deliver the vouchers for all payments, and pay over the balance due to the directors: (Sect. 110.) (l) If any officer fails to account, he may be summoned before two justices, who may determine the matter in a summary way, and adjust the balance owing, and order the officer to pay the amount, and, on default, levy the same by distress, or commit the offender to gaol for three months: (Sect. 111.) Or, if an officer refuses to deliver up vouchers, books, or other property, the justices may commit him until he does deliver them: (Sect. 112.) If an officer is about to abscond, he may be apprehended by warrant, instead of being summoned to appear before the justices: (Sect. 113.) But no such proceedings taken against an officer will deprive the company of any other remedy against the officer (m), or his surety: (Sect. 114.)

Security to be taken from officers entrusted with money.

At the ordinary meeting after the passing of the special act, and every year afterwards, two auditors are to be chosen by the shareholders, unless a different number be prescribed by the special act: (Sect. 101.) An auditor must be a shareholder, but he cannot hold another office in the company: (Sect. 102.) One auditor goes out of office every year by seniority; but he is eligible to be re-elected: (Sect. 103.) If a vacancy among the auditors occurs during the current year, the shareholders may supply it: (Sect. 104.) Ordinary meetings for the election of auditors are subject to the same provisions as ordinary meetings for the election of directors: (Sect. 105.) The directors must deliver to the auditors the half-yearly or other periodical accounts and balance-sheet, fourteen days before the ensuing ordinary meeting at which they are to be produced (s. 106); and it is the duty of the auditors to examine them: (Sect. 107.) Accountants and other persons may be employed by the auditors, and the auditors may make a special report on the accounts, or simply confirm the same: (Sect. 108.)

Auditors to be chosen.

(i) As to accounts which must be kept for three years preceding the period when an option to purchase the railway arises, see 7 & 8 Vict. c. 85, s. 5, post, App.;—for the inspection of officers who collect excise duties, 5 & 6 Vict. c. 79, s. 6, post, App.;—10 & 11 Vict. c. 42, post, App.;—and for the purposes of the poor's rate, 8 & 9 Vict. c. 20, s. 107, post, App.

(k) When a bond remains in force, although the company becomes amalgamated, and what is a breach of the condition, see *London and Brighton R. Co. v. Goodwin*, 3 Exch. 320, 736; 6 Railw. Cas.

177. See also *Davis v. Cary*, 15 Q. B. 422; *Eastern Union R. Co. v. Cochrane*, 9 Exch. 197.

(l) As to officers of dissolved companies on amalgamation, see 26 & 27 Vict. c. 92, s. 48, post, Appendix.

(m) Even in the absence of this clause, it seems that the officer would have been liable to be sued at law, notwithstanding proceedings had been taken under the statutory powers. See *Mayor of Lichfield v. Simpson*, 8 Q. B. 65; *Mullock v. Jenkins*, 21 L. J. (Chan.) 65.

10. *Remedies of Creditors against Shareholders.*

Remedies of creditors against shareholders.

We have already remarked that a railway company are incorporated by the special act, and as a corollary from this, they are at common law amenable to such judgments as may be given against them in any suit, in respect of the corporate property only, and not so as to fix any liability on the members or corporators individually. The rule is, that the creditor of a corporation can have no remedy, except upon the funds or property of the corporation, there being no right, under a judgment against the corporation, to sue out execution against the individuals, who are members of the corporation(n). There is, however, an exception grafted on this rule of the common law, in cases where a shareholder has not paid up the full amount of his shares; for the statute enacts, that if any execution be issued against the company, and there cannot be found sufficient whereon to levy such execution, then such execution may (o) (by order of the Court, to be made after notice given to the shareholder) be issued against any of the shareholders (p) to the extent of their shares not then paid up; and the execution creditor may inspect the register of shareholders, to ascertain the names of the shareholders: (8 & 9 Vict. c. 16, s. 36, App.) (q). If the shareholder, by means of such execution, shall pay any money beyond the amount due from him for calls, he is entitled forthwith to be reimbursed such sum out of the funds of the company: (Sect. 37, App.) The provisions of this statute as to the power to issue executions against a shareholder being substantially the same as in those statutes where it has been decided that it is necessary to issue a scire facias(r), the proper course is to apply for a scire facias, in cases under sect. 36(s).

(n) *Sunderland Insurance Co. v. Kearney*, 16 Q. B. 925; 20 Law J. (Q. B.) 417; 3 Steph. Com. 175. The maxim of the civil law is the same: "*Si quid universitati debetur, singulis non debetur; nec quod debet universitas, singuli debent.*" Ff. p. 3, 4, 7. So, where a foreigner was a shareholder in an incorporated company possessed of vessels, it was ruled, that in no legal sense are the individual members the owners of the property belonging to the company, and therefore that the corporation was entitled to be registered as the owner of the vessels, under the Registry Act, 8 & 9 Vict. c. 89; *R. v. Arnaud*, 9 Q. B. 806; 16 Law J. (Q. B.) 50.

(o) It would seem that the Court have no discretion to withhold this remedy. See *Hill v. London and County Assurance Co.*, 1 H. & N. 398; *Morrisse v. Royal British Bank*, 26 Law J. (C. P.) 62.

(p) This means shareholders at the time of the sheriff's return *nulla bona*. *Nixon v. Green*, 11 Exch. 550; 27 Law J. (Exch.)

509. Concurrent writs of scire facias may issue against several shareholders. *Nixon v. Brownlow*, 26 Law J. (Exch.) 12.

(q) Mandamus lies to compel inspection. *R. v. Derbyshire, &c. R. Co.*, 3 E. & B. 704. The remedies available to mortgagees and other specialty creditors are considered, post.

(r) *Eardley v. Law*, 12 A. & E. 803; S. C. 4 P. & D. 379; *Clowes v. Brettall*, 10 M. & W. 506; *Wingfield v. Barton*, 2 Dowl. P. C. (N. S.) 355; *Field v. Mackenzie*, 4 C. B. 705, 725; *Harvey v. Scott*, 11 Q. B. 92; *Dodgson v. Scott*, 2 Exch. 457; *Philipson v. Earl of Egremont*, 6 Q. B. 587; *Ricketts v. Bowhay*, 3 C. B. 889; *Bank of England v. Johnson*, 3 Exch. 598.

(s) *Hitchins v. Kilkenny R. Co.*, 10 C. B. 160; S. C. 20 Law J. (C. P.) 31; 1 L. M. & P. 712. The Court said that the principle was, that the party sought to be charged should have some opportunity of having the matter tried by a jury and bringing a writ of error; and that a scire facias was

Though it is by no means clear that the Court has not power, however unwilling to exercise it, to issue an execution in the first instance, without any scire facias (*t*).

Remedies of creditors against shareholders.

A party who has recovered judgment against the company is not precluded from issuing execution against shareholders, though lands of the company have been delivered on elegit, if the proceeds of the lands are insufficient to pay the debt (*u*). But if a sum certain has been actually received from the rents of the land extended under the elegit, the scire facias can only issue for the residue of the debt. And where no sum has been received, and the only means of satisfying the debt arise from the future rents, it is in the discretion of the Court whether they will permit the scire facias to issue (*x*). In a case (*y*) in which a creditor obtained a rule nisi for a scire facias for execution against a shareholder, and it appeared that the company was in process of being wound up, and that, though it had no property against which execution could issue, a large sum stood to the credit of the official manager, the Court enlarged the rule till it should be ascertained whether this sum could be made available for satisfaction of the judgment. Subsequently, it appeared that this sum could not be made available till after the final determination of disputes between different classes of contributories, and that there was no prospect of these disputes being determined within any definite time; and it was held, that the existence of funds which might ultimately, under the winding-up acts, be made available for payment of the debt, was no bar to the creditor proceeding under sect. 36, and the Court made the rule absolute.

It is sufficient proof (in the absence of fraud) that the defendant was a shareholder at the time the debt was incurred, that he signed

Proof that defendant was a shareholder.

therefore necessary. It ought to be clearly shown that every effort has been made to levy the execution against the company; and where it merely appeared that writs of fieri facias had been issued into two counties against the company's funds, and that nulla bona had been returned to them, it was held to be insufficient to support an application for a scire facias. *Ibid.* 32. But the Court of Exchequer subsequently ordered a scire facias to issue, where merely prima facie evidence was offered that the former execution had proved ineffectual; and the Court also decided that the writ of scire facias must allege—that the defendant was a shareholder in the company; the amount of his shares, and the amount paid upon them; as well as the fact that the former execution was ineffectual—and that all those allegations are traversable. *Devereux v. Kilkenny R. Co.*, 5 Exch. 834; S. C. 20 Law J. (Exch.) 37; 1 L. M. & P. 788; and see *Kilkenny R. Co. v. Feilden*, 20 Law J.

(Exch.) 141. In *Hitchins v. Kilkenny R. Co.*, 15 C. B. 459, the affidavit of due diligence was held sufficient. See also *Nixon v. Same Co.*, 25 Law J. (Exch.) 249; *Rastrick v. Derbyshire, &c. Co.*, 9 Exch. 149. It seems that a second application may be made, if the first was ineffectual. *Corder v. Universal Gas Co.*, 6 C. B. 554; 18 Law J. (C. P.) 90; 13 Jur. 11; *Dodgson v. Scott*, 2 Exch. 457. A corporation cannot be sued by capias ad respondendum, and proceedings against them, grounded on such process, are null and void. *Kelly v. Midland Great Western R. Co.*, 11 Ir. Law R. 305.

(*t*) See *Devereux v. Kilkenny R. Co.*, 5 Exch. 834.

(*u*) *R. v. Derbyshire, &c. R. Co.*, 3 E. & B. 784.

(*x*) *Addison v. Tate*, 11 Exch. 250.

(*y*) *Mackenzie v. Sligo R. Co.*, 4 E. & B. 119; and see *Palmer v. Justice Insurance Co.*, 26 Law J. (Q. B.) 73.

the subscription contract, and that his name was on the register of shareholders (z). And even although it appears that the directors have (the subscription contract authorizing them to abandon the undertaking, or such part thereof as they should think fit) obtained an act merely for making a portion of the line, and the act has reduced the amount of capital and altered the number and value of the shares, and there is no evidence as to the manner in which the defendant's allotment was altered, if at all, still the evidence of the original subscription and registry is sufficient to prove him a shareholder, and render him liable for work done after the passing of the act of Parliament. Nor is it enough to rebut the *prima facie* evidence, nor any evidence of fraud on the part of the directors, that in the allotment of the substituted shares they appear to have registered themselves for a smaller proportionate number of shares in proportion to the number for which they originally subscribed, than the number for which they have sought to hold the defendant responsible (a).

(z) *Nixon v. Brownlow*, 26 Law J. (Exch.) 273; 27 Law J. (Exch.) 509. As to how far a Court of Equity will interfere to restrain proceedings against a shareholder upon a judgment collusively obtained

against a company, see *Green v. Nixon*, 27 Law J. (Chan.) 819; *Horn v. Kilkenny R. Co.*, 1 Kay & J. 399; 24 Law J. (Chan.) 241.

(a) *Nixon v. Brownlow*, *ubi supra*.

CHAPTER IV.

RAILWAY INVESTMENTS.

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I. Letters of Allotment and Scrip Certificates.

PREVIOUS to the passing of a railway bill through Parliament, the managing or provisional committee usually issue letters of allotment, and subsequently scrip certificates of shares (a). Whatever doubts were once entertained with respect to the legality of the practice, it is now well known that these scrip certificates are publicly sold at the Stock Exchange (b).

Letters of allotment and scrip certificates.

The purchasers have usually no legal transfer made to them by the vendor, or the parties who issued the scrip, but the transaction is completed by payment of the purchase-money, and the handing over the scrip; and these purchases are very frequently made for the mere chance of selling the scrip at an advanced price; and in many cases such speculations would not be entered into, if the purchasers were obliged to incur the expense of stamps, and a proper legal assignment of the scrip. Soon after the passing of 7 & 8 Vict. c. 110, which as we have seen is now repealed (c), a question was raised, whether the twenty-sixth section of that act did not render such sales altogether illegal; but it was determined that that section had no application to scrip or shares issued by railway companies (d).

Executory contracts for the sale of letters of allotment and scrip are therefore legal, and may be enforced (e). Such contracts need

Executory contracts for the sale of scrip are not illegal.

(a) These scrip certificates are liable to a penny stamp. 16 & 17 Vict. c. 63, s. 8.

(b) *London Grand Junction R. Co. v. Freeman*, 2 Man. & G. 639; *Jackson v. Cocker*, 2 Railw. Cas. 372; S. C. 4 Beav. 59.

(c) Ante, p. 2.

(d) *Young v. Smith*, 15 M. & W. 121; *Lawton v. Hickman*, 9 Q. B. 563; 4 Railw. Cas. 336; *Bousfield v. Wilson*, 16 M. & W. 185; 16 Law J. (Exch.) 44; *Baker v. Plas-*

kitt, 17 Law J. (C. P.) 89. And see *Abbot v. Rogers*, 16 C. B. 292.

(e) An action will lie for non-delivery of railway scrip. *Tempest v. Kilner*, 2 C. B. 300; 3 D. & L. 407. And a broker may prove in bankruptcy, against his customer, for losses occasioned by non-completion of a contract for the purchase of such scrip. *Ex parte Barton*, 1 De Gex, 316. See also *Ex parte Norton*, 11 Jur. 699.

not be in writing, as they do not relate to an interest in land, nor to goods and merchandizes within the Statute of Frauds (29 Car. 2, c. 3)(*f*); neither does scrip fall within the description of goods and merchandizes used in the Stamp Act (55 Geo. 3, c. 184)(*g*). Contracts of sale, when reduced into writing, are not therefore exempt from stamp duties(*h*).

Stamp on contract notes.

And now by 23 & 24 Vict. c. 111, "Any note, memorandum or writing, commonly called a contract note, or by whatever name the same may be designated, for or relating to the sale or purchase of any government or other public stocks, funds or securities, or any stocks, funds, or securities, or share or shares, of or in any joint stock or other public company, to the amount or value of 5*l.* or upwards," must have a penny stamp(*i*).

Rights of holders of letters of allotment and scrip certificates.

It has been held that the mere possession of letters of allotment, or scrip certificates of shares, gives a *prima facie* ownership, for certain purposes, to the holders(*j*). Thus the owner of scrip certificates may, on his own behalf, and on behalf of other proprietors of scrip certificates, file a bill in equity, to restrain the directors of a company, which had issued the scrip, from misapplying the funds of the com-

(*f*) *Tempest v. Kilner*, 3 C. B. 249; *Bradley v. Holdsworth*, 3 M. & W. 422; *Humble v. Mitchell*, 11 A. & E. 205; *Heseltine v. Siggers*, 1 Exch. 856; *Bligh v. Brent*, 2 Y. & C. 294; *Duncuft v. Albrecht*, 12 Sim. 189; *Myers v. Perigal*, 11 C. B. 90; 2 De G., M. & G. 599; *Watson v. Spratley*, 10 Exch. 222; *Powell v. Jessop*, 18 C. B. 336; *Walker v. Bartlett*, 18 C. B. 845.

(*g*) *Knight v. Barber*, 16 M. & W. 66; 16 Law J. (Exch.) 18; *Bowlby v. Bell*, 3 C. B. 284. But railway shares may be described as goods and chattels, in pleading. *Lawton v. Hickman*, 9 Q. B. 588.

(*h*) But a letter of allotment does not require a stamp. *Vollans v. Fletcher*, 1 Exch. 20; *Willey v. Parratt*, 6 Railw. Cas. 32; 3 Exch. 211; *Moore v. Garwood*, 4 Exch. 681; 19 Law J. (Exch.) 15; *Ward v. Lord Londesborough*, 12 C. B. 252; *Mowatt v. Same*, 3 E. & B. 307.

(*i*) See further, post.

(*j*) There are few decisions which throw light on this subject. In *Daly v. Thompson*, 10 M. & W. 309, the plaintiff brought an action on the case, against the secretary of a company, to recover damages for not delivering a certificate in respect of twenty shares, alleged to have been purchased by him, and for refusing to register the shares in his name. By the act, the number of shares were to be 10,000; and it appeared, that, before the plaintiff applied to the secretary, the whole number of 10,000 shares had been registered, in consequence of a fraudulent issue of fictitious scrip, and it was objected that the action would not lie, because the register was full, and the defendants had no power to add to the

number of shares; and that appearing to be the case, the plaintiff was nonsuited. Upon a subsequent application to the Court of Exchequer, it was objected, that the plaintiff had not made out a good title to these shares, inasmuch as all that he had done, was to produce scrip certificates payable to bearer. Parke, B., said:—"The plaintiff must show that he was entitled as assignee of an original subscriber; and there is a serious question whether he could show that, merely by the production of the scrip certificate payable to bearer, in which it is stated that the share belongs to the bearer of the certificate. To say the least of it, there is great doubt whether any person, not authorized so to do, can make such evidence admissible by an act of this description, as in the case of bills of exchange payable to bearer, or promissory notes, or bills of lading, which are indorsed, and the property of which passes to the *bona fide* bearer of that indorsement. There must be a new trial, and if the plaintiff on that occasion cannot trace his title to the original subscriber, by showing who that subscriber was, and by proving an assignment from that person, and so on from all persons through whom the plaintiff claims, it will be a question whether he will be entitled to recover. All the members of the Court are not quite agreed in their view of the law upon this part of the case, and therefore I pronounce no opinion upon it at present." In a subsequent case, *Heseltine v. Siggers*, 1 Exch. 856, it was ruled, that scrip and stock may pass by mere delivery.

pany(*k*). So where letters of allotment were made by a company not registered, whose object was to establish a foreign railway, and scrip issued to the parties who presented the letters of allotment, and paid the deposits, whether they were the original allottees of the shares or not, and the holders of the scrip afterwards sold the same in the market, as if they were legally transferable by mere delivery, and the company having failed and the scheme become abortive, Sir J. Parker, V. C., directed that the dividend, declared on winding up the affairs of the company, might be divided amongst the scripholders for the time being, on the ground that the transfer which had been made, was the equitable transfer of a mere right to recover back the deposit, on a total failure of the scheme (*l*).

The practice being such as we have described, it frequently happens, that in the interval between the issuing of the scrip certificates, and the period when it is called in for the purpose of being registered, the scrip certificates pass from hand to hand on the Stock Exchange, and are the subjects of the ordinary contracts which take place in the share market. After the special act is obtained, many railway companies have been accustomed to register these holders of scrip as shareholders, without inquiring whether they were the original subscribers who had obtained the scrip, and signed the preliminary contracts, or not; and thus the registry of the shareholders has been made in numerical order, as the scrip is brought to the company's office, and not with reference to the numbers of the shares allotted, as denoted on the face of the scrip certificates. The legality of this proceeding was questioned in some cases, but it was determined, that parties when once registered as shareholders, under such circumstances, are liable to pay the calls on the shares, although they had never signed the preliminary contracts, or obtained any legal transfer of the scrip from the original allottees of the scrip (*m*). These decisions appear to be applicable to the provisions in the Companies Clauses Consolidation Act, with respect to the registration of shares; and it may now perhaps be assumed, that, if the holders of scrip apply to the company, and are registered as shareholders, they thereupon become liable to pay all subsequent calls (*n*), so long as the shares remain registered in their names.

Scrip certificates are transferred for certain purposes without writing,

and the holders are registered by the company as shareholders.

(*k*) *Bagshaw v. Eastern Union R. Co.*, 19 Law J. (Chan.) 410; 7 Hare, 114; 2 Macn. & Gord. 389.

(*l*) *Re Madrid and Valencia R. Co.*, 16 Jur. 809.

(*m*) *Birmingham and Thames Junction R. Co. v. Locke*, 1 Q. B. 256; *London Grand Junction R. Co. v. Freeman*, 2 Man. & G. 606; 2 Railw. C. 468; *Same v. Graham*, 1 Q. B. 271.

(*n*) *Cheltenham and Great Western Union*

R. Co. v. Daniel, 2 Q. B. 292; S. C. 2 Railw. Cas. 728; *Sheffield and Manchester R. Co. v. Woodcock*, 7 M. & W. 584; S. C. 2 Railw. C. 522. Where an allottee sold scrip certificates in the market, and after the company had obtained their act of Parliament, and in default of the holder of the scrip coming in to be registered, caused himself to be registered as the owner of the shares and paid the calls, and subsequently sold the shares in the market, Sir J. Wig-

But the company may refuse to register such holders, and place the names of the original allottees on the registry.

Original allottees may be registered by the company.

A change in the scheme originally proposed will not release an original allottee from the liability to be registered.

In all the cases above mentioned, the company, without offering any objection, registered the scrip, and placed the names of the holders on the register; and under the Companies Clauses Consolidation Act (8 & 9 Vict. c. 16, s. 8, post, App.), such a step, when taken, seems to constitute the party a shareholder. But a question of a different kind is raised, if a company should refuse to register the mere holder of scrip certificates, he not being the original allottee of the scrip. It is obvious, that in some cases it may be of the utmost importance, that a company, who are bound, after having obtained the special act, to carry out the undertaking (*o*), should be able to compel the parties, who signed the preliminary contracts, to come in and register themselves as shareholders; and accordingly the authorities show that the company are not without a remedy in such a case (*p*), for it seems that after the special act is obtained, they may, without the consent, and even without communication with the original allottees, insert their names in the registry of shares, and, being thus constituted shareholders, the allottees are made liable to pay all calls, although they may have sold the scrip, *bonâ fide*, in the market. Thus, where a holder of scrip certificates for shares to be allotted at a future time, by a contemplated railway company, executed the subscribers' agreement under seal, and sold his scrip in the market, and an act was afterwards obtained for making the railway, and his name was registered as a shareholder by the company, without his sanction, it was decided that until the name of the vendee of the shares was registered as the holder, the original subscriber was liable for calls made after the sale (*q*).

And further, it seems that if a subscriber for shares executes the subscribers' contract, which, as we have seen, usually gives extensive powers to the managing committee, he is bound by the provisions of the act which is ultimately obtained, even if it should authorize a scheme essentially different from that which was originally contemplated. Thus, where the subscribers' contract was for forming a company to make a railway from Dublin to Mullingar, and thence to Athlone, and authorized the directors to do all the transactions necessary for forming a railway from Dublin to Mullingar and

ram, V. C., held, that he was a trustee for the purchaser of the scrip, and was bound to account to him for the proceeds of the sale of the shares. *Beckitt v. Billborough*, 19 Law J. (Chan.) 522; 14 Jur. 238; 8 Hare, 188.

(*o*) *R. v. Eastern Counties R. Co.*, 10 A. & E. 531; *R. v. Trustees of Luton Roads*, 1 Q. B. 860; post, Part III., Chap. I., tit. "Mandamus," where we shall see that a company are not always bound to make a line they are empowered to make.

(*p*) The older authorities as to the mode

of proceeding to recover calls against an original subscriber, who has never been registered, are *Kidwelly Canal Co. v. Raby*, 2 Price, 93; *Great North of England R. Co. v. Biddulph*, 7 M. & W. 243; S. C. 2 Railw. Cas. 401; *West London R. Co. v. Bernard*, 13 Law J. (Q. B.) 68; *Thames Tunnel Co. v. Sheldon*, 6 B. & C. 341; 9 D. & R. 278.

(*q*) *Midland Great Western R. Co. v. Gordon*, 16 M. & W. 804; 5 Rail. Cas. 76; 16 Law J. (Exch.) 166; *Nixon v. Brownlow*, 26 Law J. (Exch.) 272; 27 Law J. (Exch.) 509.

Athlone, and it also bound the subscribers to submit to such regulations as might be imposed by the legislature; and the act which was afterwards obtained empowered the company to buy and work a canal from Mullingar to Athlone, and to make a railway from Dublin to Mullingar only, it was ruled that the undertaking sanctioned by the act was not so different from that pointed out in the subscribers' contract, as to relieve the subscribers from being bound by it (*r*). These decisions are the more important because, as we shall see hereafter, if the name of a party is once properly placed on the register, the Companies Clauses Act imposes on him the duty of paying calls, just as if he had expressly agreed to pay them; and it seems to be no defence to an action to recover the calls, to say that the transaction was originally tainted with such illegality as would have afforded an answer to an action brought on an executory contract (*s*). But to proceed further in this place with the consideration of the liabilities of a shareholder, when placed on the register, would anticipate a subject which will hereafter be more conveniently discussed (*t*), and we conclude this branch of our inquiry by making some remarks on the responsibilities of allottees, who obtain scrip certificates, in cases where no special act is obtained, and the undertaking is consequently abandoned.

When a managing committee fail altogether in their application for parliamentary powers, it may become necessary to ascertain what remedies are available against the parties who have executed the subscribers' contract, to meet the necessary expenses incurred by the committee, in the prosecution of the scheme. In cases of this description, the subscribers' contract must be referred to, to ascertain the rights of the parties, and proceedings at law or in equity may be instituted to carry the provisions contained therein into effect (*u*). And in cases where the party applying for shares has failed to execute the subscribers' contract, or to pay the deposit, it depends upon the terms of the contract, as they are to be collected from the prospectus, taken in connection with the written application made for shares and the letters of allotment, whether the managing committee can recover damages for nonpayment of the deposits (*x*). To support such an

If the scheme be altogether abandoned, original allottees may be sued for a portion of the expenses incurred.

But the managing

(*r*) *Midland Great Western R. Co. v. Gordon*, 16 M. & W. 804; 5 Railw. Cas. 76; 16 Law J. (Exch.) 166; *Cork and Youghal R. Co. v. Paterson*, 18 C. B. 414; *Nixon v. Brownlow*, 26 Law J. (Exch.) 272; 27 Law J. (Exch.) 509.

(*s*) *West Cornwall R. Co. v. Mowatt*, 15 Q. B. 521; 19 Law J. (Q. B.) 479, per Lord Campbell, C. J.

(*t*) Post, 96.

(*u*) *Watts v. Salter*, in error, 10 C. B. 477; *Ex parte Mowatt*, per Kindersley, V. C., Weekly Rep. 1852-3, p. 61; *Millett*

v. Browne, 2 H. & N. 837.

(*x*) *Hutton v. Thompson*, 3 H. L. C. 187; *Ashpital v. Sercombe*, 5 Exch. 147; 19 Law J. (Exch.) 82; *Ex parte Capper*, 1 Sim. (N. S.) 178; 20 Law J. (Chan.) 148; *Duke v. Dive*, 1 Exch. 36; 16 Law J. (Exch.) 234; *Duke v. Forbes*, 1 Exch. 356; 17 Law J. (Exch.) 37; *Clarke v. Chaplin*, 1 Exch. 26; 16 Law J. (Exch.) 246; *Jones v. Harrison*, 2 Exch. 52; *Daly v. Rooney*, 11 Ir. Law R. 487; and see post, 101. There seems to be no illegality in providing in the subscribers' contract, that the whole

committee must act with good faith, or they cannot recover preliminary expenses.

When allottees are liable to contribute.

action it is necessary that the managing committee should have acted with good faith; for it would be an answer, if it appeared that the contract to pay the subscription was obtained by means of false or wilful misrepresentations or misstatements, as to the affairs of the projected undertaking (y). And it is also settled, that such an action must be brought in the names of the parties with whom the contract was made. Thus, in an action brought against an allottee of shares, it appeared that the prospectus of an intended company contained a list of "provisional directors," and announced that applications for shares were to be made to "the provisional committee of management," which was subsequently appointed by a resolution of the provisional committee, and the committee thenceforward managed the affairs of the company. The defendant made an application for shares in the form prescribed, which contained a promise to pay deposits, and he received a letter of allotment from the secretary, stating that scrip certificates would be delivered in exchange for such letter. At the foot of the letter was a receipt for deposits, signed by one of the company's bankers. The form of receipt purported that the amount payable on deposits had been received "on account of the provisional committee." Between the application for shares and the allotment, some of the provisional committee withdrew and others were appointed. Under these circumstances, the defendant having been sued for non-payment of the required deposits, it was contended on his behalf that the application for shares was made to the general body of shareholders, and sent to the committee of management, as a part of that body appointed for convenience of communication, but not as having separate rights or powers; and it was also argued, that applications to be admitted to a joint undertaking would be swayed much by considering who were joined therein, and that, as some names had been withdrawn from the provisional committee and others added, the defendant ought to have the option of taking or refusing the allotted shares. Upon these facts the Court held that the plaintiffs had not proved the defendant's contract to have been made with them, and the plaintiffs were nonsuited (z). So where the defendant by letter requested the committee of a company to allot him a certain number of shares in the undertaking, and thereby undertook to receive the same or any less number, and to pay the deposit and execute the parliamentary contract and agreement when required, and in answer to

of the deposits, including the portion required to comply with the standing orders in parliament, may be applied in payment of preliminary expenses. *Garwood v. Ede*, 1 Exch. 264; 5 Railw. Cas. 134; *Willey v. Parratt*, 3 Exch. 211; 6 Railw. Cas. 32. See also *Aldham v. Brown*, 7 E. & B. 164; *Carew's Case*, 7 De G., M. & G. 43.

(y) *Wontner v. Shairp*, 4 C. B. 404. And in cases of this kind the allottees may recover back their deposits. This subject is discussed in a subsequent part of this work.

(z) *Woolmer v. Toby*, 10 Q. B. 691; S. C. 4 Railw. C. 713; 16 Law J. (Q. B.) 225. But see now 15 & 16 Vict. c. 76, s. 34, as to the misjoinder of plaintiffs.

this application he received a letter from the company allotting him certain shares, but this letter was headed "not transferable:" it was held that this term qualified the acceptance, and that the two letters did not together constitute any contract. The ground of this decision was, that the proposal on the part of the defendant was for an absolute and unqualified allotment of shares; and the proposal and acceptance not being *ad idem*, it followed that there was no binding contract between the parties (*a*).

II. Shareholders.—1. *The Registry of Shares.*

The special act prescribes the amount of the capital of the company, and the register of shareholders is formed as soon as the act has received the royal assent. We have seen that it is the practice to register the names of the holders of the scrip certificates, but that the company have the option, if they elect to exercise it, of placing the names of the original allottees of the shares on the registry (*b*). By the Companies Clauses Consolidation Act (8 & 9 Vict. c. 16), the capital of the company is directed to be divided into shares, of the prescribed number and amount, and to be numbered in arithmetical progression, beginning with number one (*c*): (Sect. 6, App.) (*d*). Such shares are declared to be personal estate, and transmissible as such (*e*): (Sect. 7.) Every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or who shall have otherwise become entitled to a share in the company, and (*f*) whose name is on the register of shareholders, is to be deemed a shareholder: (Sect. 8.)

I. The Registry of Shares.

A book, to be called the Register of Shareholders, is to be kept by the company, and the names of all shareholders must be entered therein (*g*); and the register must be from time to time authenticated

(*a*) *Duke v. Andrews*, 2 Exch. 290; see also *Willey v. Parratt*, 3 Exch. 211; *Chaplin v. Clarke*, 4 Exch. 403; *Mowatt v. Lord Lonsborough*, 3 Ell. & B. 307, 335.

(*b*) *Ante*, 90.

(*c*) See *Irish Peat Co. v. Phillips*, 30 Law J. (Q. B.) 114, 363.

(*d*) Whether the amount of each share may be varied, see *Ambergate R. Co. v. Mitchell*, 6 Railw. C. 228.

(*e*) This provision disposes of objections which would otherwise arise on the construction of the Statute of Frauds. See the cases, *ante*, 88. It also prevents a right of dower from attaching to shares. *Buckridge v. Ingram*, 2 Ves. jun. 652. Railway shares are not within the Statute of Mortmain; *Ashton v. Lord Langdale*, 20 Law J. (Chan.) 234; *Myers v. Perigal*, 21 Law J.

(C. P.) 217; 11 C. B. 90; 2 De G., M. & G. 599; *Taylor v. Linley*, 2 De G., F. & Jo. 84; *Thornton v. Ellis*, 21 Law J. (Chan.) 715; *Thompson v. Thompson*, 1 Collier's Rep. 381; and they may be described as goods and chattels in pleading, *Lawton v. Hickman*, 9 Q. B. 588; but are not, as such, included within the exemption in the Stamp Act, see *ante*, 88; nor are they goods within the Factors Act, *Freeman v. Appleyard*, 32 Law J. (Exch.) 175. Railway shares are property in respect of which bail may justify. *Pierpoint v. Brewer*, 15 M. & W. 201; 3 Dow. & L. 487.

(*f*) See *post*, 101. As to shares held by infants, bankrupts and executors, &c., see *post*, 104.

(*g*) As to the inspection of the register, see *post*, 96, note (*s*).

The registry of shares.

by the common seal of the company (*h*): (Sect. 9.) When the register consists of several volumes, following each other alphabetically and consecutively, it has been held in the House of Lords, that it is sufficient if the seal of the company be attached to the last volume (*i*), and it is not necessary to prove that the seal was affixed to the register at an ordinary meeting of the company, as directed by the above section (*h*). But where a sealed register described the holders of shares as "Brownrigg and others, trustees," and the company sued Brownrigg and one Taylor, who was his co-trustee, for calls, it was held that the register was not even *prima facie* evidence that Taylor was a shareholder, although his name appeared in the alphabetical list of shareholders, which referred to the sealed register (*l*). A defendant may, however, show that he was unlawfully placed upon the register (*m*); or, under a plea denying that he is a shareholder, he may prove that he is not a shareholder *de jure*, so as to be entitled to take the dividends due on the shares (*n*). The plea of "never indebted" puts in issue the fact of the defendant being a shareholder (*o*).

Shares may be charged with judgment debts.

Where shares remain in the name of a party on the register, they may be charged with a judgment debt due from him, under 1 & 2 Vict. c. 110, s. 14, which authorizes a judge to charge the shares of a judgment debtor "standing in his name in his own right, or in the name of any person in trust for him;" and it makes no difference that the owner of the shares had mortgaged or charged the shares to third parties for a valuable consideration, previously to the judgment

(*h*) As to what is a proper mode of keeping such a register, see *Bain v. Whitehaven and Furness R. Co.*, 3 H. L. C. 1; *London Grand Junction R. Co. v. Freeman*, 2 Man. & G. 606; S. C. 2 Railw. C. 468; *Southampton Dock Co. v. Richards*, 1 Man. & G. 448; *Birmingham, Bristol and Thames Junction R. Co. v. Locke*, 1 Q. B. 256; *London Grand Junction R. Co. v. Graham*, *ib.* 271; *Miles v. Bough*, 3 Q. B. 845; *Aylesbury R. Co. v. Thompson*, 2 Railw. C. 668; *Cheltenham and Great Western Union R. Co. v. Price*, 9 Car. & P. 55; *West London R. Co. v. Bernard*, 3 Q. B. 873; *Wills v. Murray*, 19 Law J. (Exch.) 209; 4 Exch. 843; 5 Exch. 715; *Wolverhampton New Waterworks Co. v. Hawkesford*, 29 Law J. (C. P.) 121; 31 Law J. (C. P.) 184. What remedies may be resorted to, if the company refuse to place the name of a shareholder on the register, see post, 112.

(*i*) *Inglis v. Great Northern R. Co.*, 16 Jur. 895. A mandamus does not lie to remove the seal, although improperly affixed. *Ex parte Nash*, 15 Q. B. 92; 19 Law J. (Q. B.) 296.

(*k*) *North-Western R. Co. v. M'Michael*, 5 Exch. 855; 20 Law J. (Exch.) 6; 14 Jur. 987. And in a criminal case the mere production of the register is sufficient evidence that a party named therein is a shareholder. *R. v. Nash*, 16 Jur. 553; 21 Law J. (M. C.) 147.

(*l*) *Birkenhead R. Co. v. Brownrigg*, 4 Exch. 426; 19 Law J. (Exch.) 27; 6 Railw. C. 47.

(*m*) *Galvanized Iron Co. v. Westoby*, 21 Law J. (Exch.) 302; and see post, 101.

(*n*) *Shropshire Union R. Co. v. Anderson*, 18 Law J. (Exch.) 232; 3 Exch. 401; 6 Railw. C. 56. And see *Waterford R. Co. v. Logan*, 19 Law J. (Q. B.) 259.

(*o*) *Birkenhead R. Co. v. Brownrigg*, 6 Railw. C. 47. But where a plea alleged that the defendant was placed on the register in pursuance of an illegal agreement, entered into between him and the company, it was held to be no answer to an action to recover calls. *West Cornwall R. Co. v. Mowatt*, 15 Q. B. 521; 19 Law J. (Q. B.) 478. And see *Midland Great Western R. Co. v. Bourke*, 11 Ir. Law Rep. 267.

being obtained (*p*). The remedy of the equitable mortgagee in such a case would be, it seems, in equity.

If shares in any public company in England, Ireland or Scotland, stand in the name of a bankrupt in his own right, the Court of Bankruptcy may order all persons, whose right or consent is thereto necessary, to transfer the same into the names of the assignees; and all such persons whose act and consent is so necessary, are thereby indemnified for all things done or permitted in pursuance of such order (*q*).

Shares belonging to bankrupts.

A shareholders' address book, containing an alphabetical list of all shareholders, with their places of abode and descriptions, must also be kept by the company, open to the perusal of every shareholder (*r*): (8 & 9 Vict. c. 16, s. 10, post, App.).

The holder of any share may demand of the company a certificate of the proprietorship of such share, under their seal. The certificate may be according to a form annexed to the act; (Sect. 11); and it is in all courts *prima facie* evidence of title, though the want of such certificate does not prevent the holder from disposing of his share: (Sect. 12.) If the certificate be lost or damaged, it may be renewed: (Sect. 13.)

Certificates of shares.

The company, if authorized by three-fifths of the votes of the shareholders, may convert the shares paid up into a general capital stock, to be divided amongst the shareholders: (Sect. 61.) After such consolidation, the provisions of the act, which require the capital of the company to be divided into shares, cease, and the holders of

Conversion of shares into stock.

(*p*) *Fuller v. Earle*, 21 Law J. (Exch.) 314; 7 Exch. 796. But see *Watts v. Porter*, 3 E. & B. 743; *Beavan v. Lord Oxford*, 25 L. J. (Chan.) 299; 6 De G., M. & G. 547; *Kinderley v. Jervis*, 22 Beav. 1; 25 L. J. (Chan.) 538; *Nicholls v. Rosewarne*, 28 Law J. (C. P.) 273; *Baker v. Tynte*, 29 Law J. (Q. B.) 233; *Fluester v. McLennan*, 29 Law J. (C. P.) 237. If the owner of the shares were a trustee merely, and had been so originally, a doubtful question might arise, per Martin, B., in *Fuller v. Earle*, *ubi supra*.

(*q*) Stat. 12 & 13 Vict. c. 106, ss. 125, 128. By the same act it was enacted, sect. 201, that no bankrupt should be entitled to a certificate of conformity, and any certificate, if allowed, shall be void, if the bankrupt should have lost, by any sort of gaming or wagering in one day, £20; or within one year next preceding the issuing of the fiat, or filing of the petition for the adjudication of bankruptcy, £200; or if he should, within one year next preceding the issuing of the fiat, or the filing of such petition, have lost £200 by any contract for the purchase or sale of any government or other stock, where such contract was not to be

performed within one week after the contract. Contracts entered into by a bankrupt, for the purchase of railway stock or shares, were within this section. *Ex parte Mattheson*, 1 De G., M. & G. 448; 16 Jur. 769; 21 Law J. (Bank.) 18; *Ex parte Copeland*, 22 Law J. (Bank.) 17; *Ex parte Turner*, 27 Law J. (Bank.) 30. But this section is now repealed by 24 & 25 Vict. c. 134. And see sect. 159.

(*r*) An option given to a shareholder to take new shares must be exercised strictly according to the provisions contained in the special act, *Campbell v. London and Brighton R. Co.*, 5 Hare, 519. Where shareholders were to declare their intentions to take new shares by a certain day specified in a resolution of the company, a shareholder residing abroad is bound thereby, although notice of the resolution does not reach him until after the specified day. *Pearson v. London and Croydon R. Co.*, 14 Sim. 541. See the form of a declaration for not delivering to plaintiff new shares allotted to the defendant, in respect of shares which had been sold to the plaintiff, *Simpson v. Rand*, 17 Law J. (Exch.) 146.

stock may thenceforth transfer it in the same manner as shares; and the company are required to enter every transfer of stock in a book: (Sect. 62.) The names of the holders of stock must be entered in a book, called "The Register of Holders of Consolidated Stock," which is to be accessible to holders of shares or stock (*s*): (Sect. 63.) The holders of stock are entitled to dividends, and the same privileges as would be conferred by shares of equal amount: (Sect. 64.)

2. Calls on Shareholders.

2. Calls on Shareholders.

Liability of shareholders and their representatives to pay calls.

With respect to the payment of subscriptions, and the means of enforcing the payment of calls, it is enacted by the Companies Clauses Consolidation Act (8 & 9 Vict. c. 16, App.), that persons who have subscribed any money towards the undertaking, or their legal representatives respectively, shall pay the sums respectively subscribed, or such portion thereof as shall from time to time be called for by the company; and with respect to the provisions in that act or the special act contained for enforcing the payment of calls, the word "shareholder" (*t*) shall extend to the legal personal representative of such shareholder: (Sect. 21.) The company may from time to time make calls (*u*) upon shareholders, provided that twenty-one days' notice, at least, be given of each call, and that the calls be made as prescribed; and every shareholder is liable to pay the amount of the calls so made by the company: (Sect. 22.) If calls are not paid on the day appointed, interest on the amount of the call is payable to the company: (Sect. 23.) The company may agree to pay interest to a shareholder who pays money in advance of calls: (Sect. 24.) If a shareholder fails to pay a call on the day appointed, the company may sue him for the amount, with interest, in any Court of law or equity: (Sect. 25.) And that, although the shares have been forfeited, but the value of the shares forfeited must be deducted from the amount due (*w*). Where companies are amalgamated, calls made by

(*s*) And a party, whose claim to be a shareholder is disputed by the company, may, in an action brought against the company, inspect any entries in the register, which relate to the matter in dispute. *Foster v. Governor of the Bank of England*, 8 Q. B. 689.

(*t*) By the interpretation clause, sect. 3, the word "shareholder" shall mean shareholder, proprietor, or member of the company; and, in referring to any such shareholders, expressions properly applicable to a person, shall be held to apply to a corporation.

(*u*) Circumstances may arise in the pro-

ceedings of a company, which would authorize the Court of Queen's Bench to issue a mandamus to compel the company to make calls on shareholders. *R. v. Victoria Park Co.*, 1 Q. B. 292; and see post, tit. "Mandamus." But as the creditors of a company may now recover their judgment debts from shareholders who have not paid up the full amount of their shares, the remedy by mandamus will not in such cases be likely to be resorted to. See 8 & 9 Vict. c. 16, ss. 36, 37, post, Appendix.

(*w*) 26 & 27 Vict. c. 118, ss. 6, 7, post, Appendix.

the dissolved companies previous to amalgamation are payable to and may be enforced by the amalgamated company (*u*).^a

It has been decided that the company cannot maintain an action to recover calls against any person but a shareholder (*v*), nor against a shareholder, unless the call was made strictly according to the directions contained in the statute (*x*).

It may be remarked that making the call, and the notice of it, spoken of in sect. 22, are two distinct things; for the call must be made before the notice of its having been made can be given; and it has been decided that the call means the resolution of the board that a call shall be made (*y*). So it has been ruled that the directors, and not the company, are the proper parties to make the call (*z*).

The resolution need not specify the time or place for paying the call (*a*); it is sufficient if the directors appoint a time and place, which is notified to the shareholder by the notice, allowing him twenty-one days (*b*) for the purpose of payment. This was decided in *Newry and Enniskillen R. Co. v. Edmunds* (*c*). In that case an action having been brought to recover calls, one of the questions was, whether the calls were duly made, in pursuance of the twenty-second section. It appeared that a meeting of the directors had been held, at which it was resolved, that a second call be made, and "that one month's notice be given;" but the resolution contained no time or place for payment. The following notice was afterwards sent to the defendant, signed by the secretary of the company: "Sir,—The directors having made a call of 2*l.* 10*s.* per share, payable on or before the 8th of August next, you are requested to pay the sum of 125*l.*, being the amount payable, in respect of such call, of the shares held by you in

The resolution to make a call need not state the time and place of payment.

Newry and Enniskillen Railway Company v. Edmunds.

(*u*) 26 & 27 Vict. c. 92, s. 52, post, Appendix.

(*v*) *Wolverhampton New Waterworks Co. v. Hawkesford*, 28 Law J. (C. P.) 242. Therefore it is not sufficient that the defendant was merely a subscriber to the undertaking. In such a case, he must be sued on the subscription contract by the persons with whom it was entered into.

(*x*) The proper mode of giving notices to shareholders may be seen by referring to 8 & 9 Vict. c. 16, ss. 136 to 139, post, App. 40. In an action for calls, to show notice thereof to the defendant, the plaintiff proved that it was the course of business for C., a deceased clerk, to fill up printed notices of the calls, and direct them to the shareholders, and then to put them into a basket for another clerk to post, which he had done on the occasion of this call. A list of shareholders, containing the name of the defendant, was produced in C.'s handwriting, and indorsed by him, "Letters sent out." C. had received instructions to make out such a list, and had been filling up and

directing the notices with such a list before him: it was decided that the list so indorsed was evidence that notice of the call had been sent to the defendant. *Eastern Union R. Co. v. Symonds*, 6 Railw. C. 578; 19 Law J. (Exch.) 287; 5 Exch. 237.

(*y*) *Ex parte Tooke*, 6 Railw. C. 1; 18 Law J. (Q. B.) 343; *R. v. Londonderry and Coleraine R. Co.*, 13 Q. B. 998. As to the effect of void calls not withdrawn upon subsequent good ones, see *Welland R. Co. v. Berrie*, 30 L. J. (Exch.) 163.

(*z*) *Ambergate R. Co. v. Mitchell*, 6 Railw. C. 235; 4 Exch. 540.

(*a*) *Great North of England R. Co. v. Biddulph*, 7 M. & W. 243.

(*b*) This means twenty-one clear days, *i. e.* exclusive of the first and last days. *Re Jennings*, 1 Ir. Eq. Rep. 236, N. S.

(*c*) 2 Exch. 122; 17 Law J. (Exch.) 102. See also *Sheffield, Ashton, and Manchester R. Co. v. Woodcock*, 7 M. & W. 574; 2 Railw. C. 522; *London and Brighton R. Co. v. Fairclough*, 2 Man. & G. 674; 2 Railw. C. 544.

*Newry and Ennis-
killen Railway
Company v. Ed-
munds.*

this company, to any of the under-mentioned bankers." It was objected on behalf of the defendant that the call was illegal, inasmuch as the resolution did not state the time and place of payment, and that the twenty-first section of the statute clearly showed that a time and place for payment should be appointed; but upon an application being made for a new trial, Lord Wensleydale said:—

"It is clear that the word 'call' is used in the act in two different senses. In one part it means, the application to the shareholders to pay; and in another, the amount to be paid. The sections which empower the company to make calls, contain no express direction that the same application shall be made to each individual for the same portion of the sum originally subscribed. Probably the directors may be under an obligation to do so; but I am certainly of opinion that it is not a condition precedent to their right to recover the amount of the call. If it were so held, the affairs of these companies would be in the greatest confusion; for suppose a notice by accident mislaid, the consequence would be, that the shareholder for whom it was intended would not be bound to pay his call; and those who had already paid on individual notices, and who might be supposed to have paid on the faith that the call was made on each equally, would have a right to claim from the directors the money they had paid, on the ground that it was paid under a mistake of the facts. That construction would be fraught with such evil consequences, that I think it impossible (putting a reasonable interpretation on the act of Parliament) to say that the Legislature intended that what they have not expressly declared, but which is only implied, should amount to a condition precedent. I am, therefore, of opinion, that it is not a condition precedent that each party should have notice to pay the amount of his call at the same time and place. It follows that the resolution to make a call need not specify either the time or place for payment; but the directors must appoint a time and place, which must be notified to the shareholder by a notice allowing him twenty-one days for the purpose of payment. The case of *Great North of England R. v. Biddulph* (d) proves that the resolution need not contain the *place* of payment; and I think that, by implication, it also proves that it need not contain the *time* of payment. The resolution is nothing more than a determination that thereafter 'a call' shall be made; that is, that an application shall be made to each shareholder for a proportion of his share; and it is enough if the directors appoint a time or place, either by public advertisement (where such a mode is allowed by the private act), as in the case referred to, or, under the general act, by an individual notice to each shareholder."

The notice of call
may be waived.

There are some cases where a defendant cannot take the objection that a notice requiring him to pay calls has not been proved. Thus, if a party expressly promises to pay a demand for calls, the jury may infer that a proper legal notice was given, unless the plaintiffs affirmatively show, as part of their case, that an informal notice was in fact sent to the defendant. The rule seems to be, that when the Court does not know the facts, an express promise may enable them to infer that what is right has been done; but when the facts are known, and they are insufficient, then the promise does not make them sufficient (e).

(d) 7 M. & W. 243.

(e) *Miles v. Bough*, 3 Q. B. 845.

And where the declaration averred "that the defendant had due notice of the calls, to wit, by notice in writing, signed by the then clerks of the trustees, and left at the then usual place of abode of the defendant," it was contended, that, as notice was averred, and not excused in the declaration, a promise to pay did not entitle the plaintiff to succeed in the action; but the Court overruled that objection (*f*). So after verdict it was held to be no objection in arrest of judgment, that the declaration did not expressly state that the calls were authorized to be made by the trustees (*g*).

It will be necessary to prove that the calls were made at the periods (if any) authorized by the statute; and it seems that a director, who was a party to the making of an illegal call, is not estopped from setting up the illegality of the call, as a defence to an action for calls brought against him (*h*).

And it has been said, that even if a statute contains no express direction that a notice of calls being made shall be given, still a party cannot be sued for non-payment of a call till he has received notice thereof (*i*). The rule is, that when an action is given only if the party shall neglect or refuse to pay, reason and justice require that the party should have notice (*k*).

Where a special act provided that three months, at least, should intervene between successive calls, and the directors, on the 11th January, resolved that a call should be made, to be payable on the 15th February; and on the 8th May, they made another call, to be payable on the 19th June; it was ruled that the calls were properly made (*l*).

It is now clear that calls may be made payable by instalments (*m*). But no action can be maintained until the last instalment is due (*n*), and no forfeiture is incurred until nonpayment of the last instalment (*o*).

Calls may be made payable by instalments.

Interest on the calls is recoverable under the count for calls (see sect. 27), and it is not necessary to add a count for interest (*p*).

Interest.

Having thus seen how the resolution to make a call should be entered into, and the notice thereof given to the shareholders, we may proceed to notice that the statute further enacts, "that in any action or suit to be brought by the company against any shareholder

Form of the declaration and evidence necessary to support an action for calls.

(*f*) See *Burgh v. Legge*, 5 M. & W. 421; also, 2 Stark. on Ev. 229, n. (*f*), 3rd ed.

C. 236; 4 Exch. 540.

(*g*) *Miles v. Bough*, 3 Q. B. 845.

(*m*) *Ambergate R. Co. v. Norcliffe*, 20 Law J. (Exch.) 234; 6 Railw. C.; 6 Exch. 629.

(*h*) *Stratford R. Co. v. Stratton*, 2 B. & Ad. 518.

(*n*) Per Martin, B., *L. and N. W. R. Co. v. M'Michael*, 6 Exch. 273; 6 Railw. C. 497; 20 Law J. (Exch.) 234.

(*i*) *Painter v. Liverpool Oil Gas Co.*, 3. Ad. & E. 433; *Brook v. Jenney*, 2 Q. B. 271; *Edinburgh and Leith R. Co. v. Hebblewhite*, 6 M. & W. 716.

(*o*) *Ibid.*

(*k*) *Miles v. Bough*, 3 Q. B. 845.

(*p*) *Southampton Dock Co. v. Richards*, 1 M. & G. 448; *London and Brighton R. Co. v. Fairclough*, 2 M. & G. 674.

(*l*) *Ambergate R. Co. v. Mitchell*, 6 Railw.

to recover any money due for any call (*q*), it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare (*r*) that the defendant is the holder of one share or more in the company, (stating the number of shares,) and is indebted to the company in the sum of money to which the calls in arrear shall amount, in respect of one call or more upon one share or more, (stating the number and amount of each of such calls,) whereby an action hath accrued to the company by virtue of that and the special act" (*s*): (8 & 9 Vict. c. 16, s. 26, post, App. 28.)

Evidence to support an action for calls.

"On the trial or hearing of such action or suit, it shall be sufficient to prove that the defendant, at the time of making such call, was holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given as is directed by that or the special act; and it shall not be necessary to prove the appointment of the directors who made such call, nor any other matter whatsoever: and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear either that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period:" (Sect. 27.)

The production of the register of shareholders is *prima facie* evidence of the defendant being a shareholder: (Sect. 28.)

(*q*) Where an action was brought in England by an Irish railway company to recover calls, the plaintiffs were required to give security for costs, upon the ground that it resembled the case of a plaintiff who resided in Ireland. *Kilkenny R. Co. v. Feilden*, 20 Law J. (Exch.) 141; 6 Exch. 81. Where a railway was partly in Scotland and partly in England, and the English Consolidation Acts were declared to form part of the special act, so far as might be necessary for carrying into effect the purposes of the act in relation to such portions of the railway as were in England, it was held that the company was a corporation with a double character, being both Scottish and English, and that a writ of summons served upon the secretary of the company in London was good service. See 8 & 9 Vict. c. 16, s. 135, post, App. 40; *Wilson v. Caledonian R. Co.*, 5 Exch. 822; 20 Law J. (Exch.) 7; 15 Jur. 17. But where an act for making a railway from Dublin to Drogheda enacted that service of a writ upon a secretary of the company, or at the company's office, or by delivering it to some inmate at such office, or at the abode of the secretary, or, in case the same

respectively should not be found or known, then service on any other agent of the company, or on any one director of the said company, should be deemed good service; and it being shown that the company had an office in Dublin, it was held, that a writ against the company ought to be served in Ireland, and that service of an English writ of summons upon a director in London was void; and the Court set aside a judgment founded thereon. *Evans v. Dublin and Drogheda R. Co.*, 2 Dowl. & L. 865; 14 Law J. (Exch.) 245.

(*r*) The cases decided on this section, and a form of the declaration, are given, post, Appendix.

(*s*) In some of the earlier railway statutes a power was given to recover calls by actions of debt or on the case. See *Huddersfield Canal Co. v. Buckley*, 7 T. R. 36; *Miles v. Bough*, 3 Q. B. 845. Whether a company may set off the amount of calls due from the plaintiff, against a claim made by the plaintiff in respect of services performed by him for the company, and as to the form of such a plea, see *Moore v. Metropolitan Sewage Co.*, 3 Exch. 333; 6 D. & L. 496.

But although the name of a party be found on the register, he is entitled to show that his name has been illegally placed there, without his authority; and a purchaser of shares, or even an original subscriber, cannot be sued for calls, until his name is placed on the register (*t*).

The entry of the name on the register is not conclusive evidence of the liability to pay calls.

So where the register was produced, and the defendant's name appeared there as the proprietor of fifty shares, but the evidence was that the defendant had applied for shares before the special act was obtained, and had paid the deposit thereon, but he had never executed the subscribers' agreement or parliamentary contract, the Court of Exchequer held that the company were not justified, under such circumstances, in placing the defendant's name on the register, and that he was not therefore liable to be sued for calls (*u*). The Court decided this case on the ground that the defendant was not a person who had subscribed the prescribed sum to the capital of the company, or who had otherwise become entitled to a share in the company, within the meaning of the eighth section of the Consolidation Act (*x*).

If shares are sold and transferred after a call has been actually made, but before any notice of it has been given to the vendor, the latter is liable to pay the call to the company; but that does not affect the right of the vendor to recover the amount of the call against the vendee, under the contract of transfer (*y*). And although the registered owner of shares be a mere trustee, he is, in the absence of a special contract to the contrary, alone liable to the company for the calls on such shares, and the company have no remedy, in equity, against the real or beneficial owner of such shares (*z*).

Let us now consider the defences which may be set up on behalf of a defendant in an action to recover calls. The usual plea is, "that he never was indebted as alleged," which puts in issue all the material allegations in the declaration, and consequently the fact that the defendant was a shareholder in the company, at the time the call was made (*a*). Under this plea he may not only dispute that he is a shareholder *de facto*, but may also show that he is not a shareholder *de jure*, so as to be entitled to share in the profits of the undertaking.

Pleas for defendant, in an action to recover calls.

(*t*) See ante, 97; *Newry and Ennis-hillen R. Co. v. Edmunds*, 2 Exch. 118. The right of the company to register the original allottees of scrip, without their consent, is discussed, ante, 90.

(*u*) *Waterford and Dublin R. Co. v. Pidcock*, 22 Law J. (Exch.) 146; 8 Exch. 279. But if the defendant had executed the subscribers' agreement and parliamentary contract, he would have been liable to pay the calls. See ante, 90.

(*x*) 8 & 9 Vict. c. 16, s. 8, post, App. 25.

(*y*) *Ex parte Tooke*, 6 Railw. C. 1; *North American Colonial Association of Ire-*

land v. Bentley, 15 Jur. (Q. B.) 187; 19 Law J. (Q. B.) 427; and see further on this point, post, 112, and Rule, No. 89, on the London Stock Exchange, post, 122.

(*z*) *Newry R. Co. v. Moss*, 15 Jur. 473; 20 Law J. (Chan.) 633; 14 Beav. 64.

(*a*) *Birkenhead, &c. R. Co. v. Brownrigg*, 4 Exch. 426. "Never indebted" is a good plea to an action for calls founded on a colonial act. *Welland R. Co. v. Blake*, 30 Law J. (Exch.) 161. In *Welland R. Co. v. Gowan*, 30 Law J. (Exch.) 162, n., the Court on demurrer struck out a plea that the defendant was not a shareholder.

Pleas in actions
for calls.

Thus, in a case where the special act enacted that the provisions of the general act, as to the distribution of the capital into shares, and the enforcing the payment for calls, should be incorporated with it, and that the company might create new shares in the manner to be agreed upon at a general meeting of the company, the defendant was allowed to plead never indebted, and that he was not a shareholder, and, thirdly, a plea traversing the making of the calls; but he was not allowed to plead that there had been no meeting of the company before the shares had been created; nor that the shares were not agreed to be created at a meeting of the company; inasmuch as both these questions would arise under the two first pleas (*b*).

And a plea that, after the making of the call and before the same was payable, the defendant transferred his shares to another, was held to be bad, as being an argumentative denial that he was indebted (*c*).

It is also a good plea that the call was not made by persons having authority to make it (*d*). And where the special act provided that the whole of the capital should be subscribed before the powers and provisions of the act should be put in force, and the company made a call on the shares before the subscriptions were completed, and commenced an action to recover the call so made, after the whole capital was subscribed; it was decided that the completion of the subscription list was necessary to enable the company to make the call, and that the action was not maintainable (*e*). But such a plea is no answer, in cases where there is no similar provision in the special act, as the 8 & 9 Vict. c. 18, s. 16 (*f*), which requires the whole capital of the company to be subscribed before the compulsory powers can be exercised, does not prevent the company from making calls before the whole of the capital is subscribed (*g*). Nor is it a good plea that the company had abandoned a part of the railway before the call was made (*h*); or that the call was not made within six years (*i*), as the action for calls being founded on a statute, there

(*b*) *Shropshire Union R. and Canal Co. v. Anderson*, 3 Exch. 401; 18 Law J. (Exch.) 232; 13 Jur. 175.

(*c*) *Aylesbury R. Co. v. Mount*, 7 M. & G. 898.

(*d*) *Swansea Dock Co. v. Levien*, 20 Law J. (Exch.) 447.

(*e*) *Norwich and Lowestoffe Navigation Co. v. Theobald*, 1 M. & M. 151.

(*f*) Post, App. 48.

(*g*) *Waterford and Dublin R. Co. v. Dalbiac*, 6 Exch. 443; 20 Law J. (Exch.) 227; 6 Railw. C. 753.

(*h*) *Re Jennings*, 1 Ir. Eq. Rep. 236, N. S. See further as to what pleas alleging fraud may be put on the record, *Waterford and Dublin R. Co. v. Logan*, 19 Law J. (Q. B.)

259; 14 Q. B. 672; see also *South-Eastern R. Co. v. Hebblewhite*, 12 A. & E. 497; 2 Railw. C. 247; *South-Eastern R. Co. v. Cook*, *Ib.* 250; *London and Brighton R. Co. v. Wilson*, 1 Railw. C. 530; 6 Bing. N. C. 135; *Thames Haven R. Co. v. Mount*, 3 Railw. C. 441; *Deposit and General Life Assurance Co. v. Ayscough*, 6 E. & B. 761; 26 L. J. (Q. B.) 29, from which it would seem that a shareholder induced to become such by fraud, must repudiate the shares as soon as he is aware of the fraud, or he will still be liable to calls.

(*i*) *Cork and Bandon R. Co. v. Goode*, 17 Jur. 555; 13 C. B. 826. See also *Shepherd v. Hills*, 11 Exch. 55.

is the same period of limitation as on a record or specialty, viz., twenty years.

Before we leave the subject now under consideration, it is necessary to refer to some decisions, which show under what circumstances *Infants*, *Bankrupts*, and the *Executors* and *Administrators* of shareholders are liable to be sued for calls.

First, as to infant shareholders. By the express words of the statute, an infant is capable of becoming a shareholder (*k*); and it is clearly settled, that if he be registered whilst an infant, and remains a shareholder afterwards, he becomes liable to pay calls, whether they were made during or since his infancy, for the fact of his permitting his name to remain on the register as a proprietor of shares amounts to a ratification of the contract to become a shareholder (*l*). And an infant cannot defeat an action to recover calls by merely pleading that he was an infant when the calls were made; or that he was an infant at the time of becoming a holder of the shares, in respect of which the calls became payable; for, as he may have lawfully received the shares by bequest, or by purchase from the original proprietor, he must show on the plea the special circumstances which relieve him from liability—such as a disclaimer of the contract when he became of age (*m*).

Infant shareholders.

So where, in addition to the pleas above mentioned, the defendant pleaded that he had never ratified the proprietorship of the shares, or at any time derived any profit, benefit or advantage whatever by being the proprietor of the shares, and that such proprietorship had always been wholly unprofitable and useless to him; the pleas were held to be insufficient, because, if the defendant had attained his majority, he ought to have averred that he then disclaimed the contract, and if he was still under age, that fact ought to have appeared on the face of the plea (*n*).

It seems, however, that if an infant becomes a shareholder by purchase during his infancy, he may disaffirm the contract either when he becomes of age, or during his minority; and in pleading such disaffirmance as an answer to an action for calls, it is sufficient to allege "that the defendant disaffirmed and repudiated his contract, of which disaffirmance and repudiation the plaintiffs had notice, and that the defendant gave notice to the plaintiffs that he then held the shares at their disposal (*o*)."

(*k*) 8 & 9 Vict. c. 16, s. 79, post, App. 34. But a mandamus to register an infant shareholder has been refused in Ireland. Post, 112. note (*q*).

(*l*) *Cork and Bandon R. Co. v. Cazenove*, 10 Q. B. 935.

(*m*) *Leeds and Thirsk R. Co. v. Fearnley*, 4 Exch. 26; 18 Law J. (Exch.) 330; *Bir-*

kenhead R. Co. v. Pilcher, 5 Exch. 114; 20 Law J. (Exch.) 97.

(*n*) *North-Western R. Co. v. M. Michael*, 5 Exch. 124; 20 Law J. (Exch.) 97.

(*o*) *Newry and Enniskillen R. Co. v. Coombe*, 3 Exch. 565; 18 L. J. (Exch.) 325. But the plea should show that the repudiation was within a reasonable time. *Dub-*

Infant shareholders.

The result of the cases seems therefore to be, that infant proprietors of railway shares are treated as purchasers who have acquired an interest, not in a mere chattel, but in a subject of a permanent nature, with certain obligations attached, which they are bound to discharge—like an infant purchaser of real estate, who has taken possession, and thereby becomes liable to all the obligations attached to the estate; unless he has elected to waive or disagree to the purchase altogether, either during infancy, or after full age, at either of which times it is competent for an infant to do so (*p*).

Bankrupt shareholders.

With respect to the liability of a bankrupt to pay calls made on shares after his bankruptcy, it seems that if the assignees refuse to accept the shares (*q*), the bankrupt may be sued for subsequent calls as they become due, notwithstanding he has obtained his certificate; and where after bankruptcy the trade assignee sent the official assignee a statement of the bankrupt's property, comprising in it the value of certain railway shares, and estimating the probable amount that would be forthcoming to work the fiat and pay dividend, and suggesting the propriety of selling the shares, it was decided that there was no evidence that the assignees had accepted the shares (*r*).

Executors and administrators.

Lastly, as to the recovery of calls from executors and administrators. The personal representatives of shareholders are, by the express words of the twenty-first section of the Companies Clauses Consolidation Act, made liable to pay calls (*s*). But it has been held that the statutory form of declaring for calls (*t*) is not applicable where an executor or administrator is sued for calls made during the lifetime of the testator, when he was the registered owner of the shares (*u*); a count therefore must be framed to meet the facts.

Bequests of shares.

Whether future calls payable on shares should be ultimately paid out of the testator's estate, or by the parties to whom the shares have

lin and Wicklow R. Co. v. Black, 22 Law J. (Exch.) 94; 8 Exch. 181. See also *Deposit and General Life Assurance Co. v. Ayscough*, 6 E. & B. 761; 26 Law J. (Q. B.) 29.

(*p*) *North-Western R. Co. v. M^r Michael*, 5 Exch. 124; 20 Law J. (Exch.) 97. Where an infant employed a stockbroker to sell shares on his account, and the stockbroker afterwards sold the shares and received the purchase-money, and handed over a transfer from the infant, and placed the purchase-money to the credit of a debt which was due to him from the infant in respect of dealings between them for shares, Sir K. Bruce, V. C., held that the purchaser of the shares had no remedy in equity against the infant after he became of age, on the ground that fraud had been practised by him, although the railway company had refused to register the transfer of the shares,

because it was made during infancy. *Stikeman v. Dawson*, 1 De G. & S. 90; 16 Law J. (Chan.) 205.

(*q*) As to the statutory provisions relating to the transfer to the assignees, see ante, 95.

(*r*) *South Staffordshire R. Co. v. Burnside*, 5 Exch. 129; 20 Law J. (Exch.) 120; 6 Railw. C. 611; *Ex parte Greenshields*, 16 Jur. 517.

(*s*) 8 & 9 Vict. c. 16, s. 21, post, App. 27. And calls appear to be specialty debts, and must therefore be discharged before simple contract debts: see *Cork and Bandon R. Co. v. Goode*, 17 Jur. 555. And see supra, p. 103.

(*t*) 8 & 9 Vict. c. 16, s. 26, post, App. 28.

(*u*) *Birkenhead R. Co. v. Cotesworth*, 5 Exch. 226; 19 Law J. (Exch.) 240; 6 Railw. C. 211.

been bequeathed, is sometimes a doubtful question, depending in each instance upon the terms of the bequest (*v*). Bequests of shares.

The current of recent decisions tends to show that where shares are specifically bequeathed calls due before the death of the testator must be paid out of his general estate, but calls due subsequently must be paid by the specific legatee who takes *cum onere* (*w*). In a case in which a testator gave to his son "any shares in railways, mines, and other undertakings that may belong to me at my decease," *Kindersley, V. C.*, held that whatever payment was due at the time of the testator's death to constitute him a complete shareholder in the concern, and whatever calls were made at his death, must be paid out of his general assets; but if at his death he was constituted a complete shareholder in the concern, whether it was a going concern at his death or not, whether it was partially or wholly completed, all the calls made subsequently to the death of the testator must be borne by the specific legatee (*x*). *Day v. Day.*

In a case in equity, a testator, who, at the time of his death, was possessed of fifty original and seventy purchased shares in a railway, in respect of which all the calls had not been made, by his will gave thirty whole shares in the railway to trustees for the benefit of a married woman for life, without power of anticipation, and thirty shares to B.; and he declared that the legacies should not be held to be specific, so as to be capable of ademption. By a resolution of the railway company, new quarter shares were raised and offered rateably to the registered proprietors. Sixty new shares were offered to and accepted by the executors, and the deposit thereon was paid by them. It was decided that the bequests were specific, and that the income of the shares from the time of the testator's death belonged to the legatees; that the legatees were entitled to so many of the new shares as had been allotted in respect of the whole shares bequeathed to them, subject to the payment of the future calls; and that the testator's estate was liable to pay the calls on the whole shares purchased by the testator, as well as on the original shares; and a sufficient sum to cover the unpaid calls was ordered to be placed to a separate account, *Jacques v. Chambers.*

(*v*) Some cases determined before the passing of the Companies Clauses Consolidation Act are to be found in the books. When the executor of an original subscriber to a railway company was held to be liable to pay calls made in the lifetime of the testator, as well as those made after his death, see *Fyler v. Fyler*, 2 Railw. C. 813; 3 Beav. 550; *Blount v. Hipkins*, 7 Sim. 51. So in the case of an administrator of a subscriber to a projected canal who died before the act passed for making it: *Weald of Kent Canal Co. v. Robinson*, 5 Taunt. 800. The liabilities of the personal representatives of

a deceased shareholder in a joint-stock company conducted under a deed of settlement to pay calls are discussed in *Wills v. Murray*, 4 Exch. 843; 5 Exch. 713; 19 Law J. (Exch.) 209; and *Steward v. Wheatley*, Weekly Rep. 1852-3, p. 160.

(*w*) *Fitzwilliams v. Kelly*, 10 Hare, 266; 22 Law J. (Ch.) 1016; *Armstrong v. Burnet*, 20 Beav. 424; 24 Law J. (Ch.) 473; *Addams v. Ferick*, 26 Beav. 384; 28 Law J. (Ch.) 594; *Day v. Day*, 29 Law J. (Ch.) 466; *Re Box*, 33 Law J. (Ch.) 42 (gas shares).

(*x*) *Day v. Day*, ubi supra.

Bequests of
shares.

and laid out, and the income meanwhile paid to the persons entitled (*y*).

So where a testatrix bequeathed some railway shares "and all her right, title and interest therein," it was ruled in equity, that money which the testatrix had paid in advance beyond the calls passed to the legatee (*z*).

And where a testator gave to trustees all his leasehold estates, and the residue of his monies, chattels, funds, railway shares, and other personal estate, on trust to convert into money all such parts as should not consist of government securities or railway shares, and apply the monies arising for the benefit of his wife and children, and after the death of his wife, if there should be no children, the testator directed his real estate to be sold, and the money arising therefrom, and from his residuary personal estate and effects, to be held upon certain trusts: it was decided, that the railway shares passed in the gift over, after the death of the widow (*a*).

3. *Transfer of Shares.*

3. Transfer of
Shares.

Every share-
holder may sell
his shares.

With respect to the transfer of shares, the Companies Clauses Act provides, that every shareholder may sell and transfer his shares or his interest in the capital stock (*b*), by deed duly stamped, which *may be* according to the form annexed to the act (*c*): (8 & 9 Vict. c. 16, s. 14, post, App. 26.)

It will be observed, that the use of the form given by the statute is discretionary and not compulsory. But it is best always to adopt it, as the following sect. (15), which will be considered presently (*d*),

(*y*) *Jacques v. Chambers*, 4 Railw. Cas. 205, 499; 15 Law J. (Chan.) 225; 11 Jur. 295. And see *Oakes v. Oakes*, 9 Hare, 665.

(*z*) *Tanner v. Tanner*, 11 Beav. 69; 17 Law J. (Chan.) 115; 12 Jur. 87. Railway shares or scrip and debentures are not within the statutes of mortmain, and may therefore be devised by will, ante, 93, note (*e*). Where a bequest was made, whereby a testator gave the interest and proceeds of his property to persons for life, with a gift over, and a portion of his estate consisted of railway shares, Sir J. Romilly, M. R., decreed, that any person having an interest in the fund was entitled to have the shares sold, and the proceeds invested in the funds. *Thornton v. Ellis*, 21 Law J. (Chan.) 714.

(*a*) *Surtees v. Hopkinson*, 18 Law J. (Chan.) 188.

(*b*) The stock of a railway company is included in "stock," as defined by the Lunacy Regulation Act, 1853, 16 & 17 Vict. c. 70, and an order may be made, under sect. 140 of that act, for the transfer into

the name of the Accountant-General of stock of that description belonging to a lunatic. *Re Ives*, 32 Law J. (Chan.) 673.

(*c*) See the form, post, App. 44. It seems that the company would be bound to transfer shares, even to insolvent persons. See *Huddersfield Canal Co. v. Buckley*, 7 T. R. 36. If there was no secret trust for the benefit of the transferor. *R. v. Midland Counties and Shannon R. Co.*, 9 Law T. (N. S.) 151, post, 112, note (*q*). It will be seen that the form requires the seals of both transferor and transferee. This is in order that the company may have some one on the register who is bound to pay calls, and would therefore seem to be imperative as against the company, though, perhaps, directory merely as between the parties. See the case of a transfer of stock at the Bank of England, *Foster v. Bank of England*, 8 Q. B. 689. See cases cited infra, note (*f*), and the observations of Wood, V. C., in *Hare v. L. and N. W. R. Co.*, 30 Law J. (Chan.) 821, note.

(*d*) Post, p. 111.

directs that the deed of transfer shall be kept by the secretary of the company. And if it is intended to declare any trusts of the shares, or if the transfer relates to shares in more than one company, difficulties may arise, as the deed cannot of course be kept by more than one company; and where there are trusts, it is highly inconvenient that any company should have the deed declaring them. Convenience requires that the transfer which is to be kept by the company should be a simple conveyance of the legal title, merely showing who is shareholder (*e*). In such cases then there should be a separate deed of transfer for each company, and, if necessary, a separate declaration of trust. The necessity of this caution is exemplified by the following case. The holder of shares in a railway company, whose act incorporated the Companies Clauses Act, conveyed the shares, along with much other property, by a deed, not in the form given by the act, in consideration of 10s., and the natural love and affection which he bore to his sister, to a trustee in trust for her. It was held, that this, though not a *sale*, was a *transfer* within the meaning of sect. 14, (and not a transmission within sects. 18, 19,) and, consequently, that the trustee was not entitled to be registered as holder of the shares without delivering the deed to the secretary, to be kept by him as provided by sect. 15 (*f*). It has, however, been decided that two or more persons possessed of shares may join, and by one deed transfer their interests to a purchaser; and, in such a case, it is sufficient if the ad valorem stamp is attached, calculated on the consideration paid for the whole shares collectively (*g*).

The deed of transfer.

Copeland v. North Eastern R. Co.

Deeds of transfer should never be executed by the vendor with blanks for either the amount of shares or the name of the purchaser, as such deeds, though not recognized by the Committee of the London Stock Exchange (*h*), and void for most purposes (*i*), may yet, perhaps, in the hands of a *bonâ fide* purchaser for value without notice, be held to be good by estoppel as against the vendor, who may thus be cheated out of shares which he never intended to part with. Executing a transfer in blank is in truth, as was said by Lord Wensleydale in *Hibblewhite v. M^r Morine*, an attempt to make a deed transferable and negotiable like a bill of exchange or exchequer bill, which the law does not permit. The following cases show the folly of such an attempt:—T. being the holder of certain 20*l.* shares, and also of certain 2*l.* shares in the same company, instructed his broker

Deeds in blank.

(*e*) Per Lord Campbell, C. J., in *R. v. General Cemetery Co.*, 6 E. & B. 419.

(*f*) *Copeland v. North-Eastern R. Co.*, 6 E. & B. 277. See also *R. v. General Cemetery Co.*, ib. 415.

(*g*) *Wills v. Bridge*, 4 Exch. 193; 18 Law J. (Exch.) 384.

(*h*) Rule 84, post, p. 122.

(*i*) *Hibblewhite v. M^r Morine*, 6 M. & W. 200. In *Sheffield and Manchester R. Co. v. Woodcock*, 7 M. & W. 574, it was held, that a purchaser, under a deed executed in blank, who had got his name on the register, could not set up the invalidity of the deed in an action against him for calls.

The deed of transfer.

Taylor v. Great Indian Peninsular R. Co.

Ex parte Swan.

to sell the latter. The broker sold the 20*l.* shares, and brought to T. for execution deeds of transfer, in which blanks were left for the name of the transferee and the number and numbers of the shares. The deeds bore stamps high enough to carry the 20*l.* shares, and were executed in blank by T. The deeds were delivered in this condition, together with the certificates for the 20*l.* shares, which had been fraudulently obtained by the broker, to *bonâ fide* purchasers, who filled up the blanks. Upon a bill filed by T., it was held by Wood, V. C., and his decision was affirmed on appeal, that the deeds of transfer were void, and that he was entitled to the shares expressed to be transferred thereby, and to have his name restored to the register (*k*). But in another case, in which S., a holder of shares in a joint-stock company, was induced by O. his broker to entrust him with deeds of transfer signed by S. in blank, and O., having afterwards stolen from S. certain share certificates, was enabled, by means of the blank transfers, to transfer to innocent purchasers for value the share certificates, and the names of the transferees were in due course entered on the register as shareholders instead of S. : upon a rule by S., under the joint-stock companies acts, to rectify the register, the Court of Common Pleas were equally divided in opinion as to whether they should interfere or not, and the rule dropped (*l*). A similar application was afterwards made to the Court of Exchequer, who directed an action to be brought by S. against the company, in order that the question might be put on the record. An action was brought and a verdict found for the plaintiff, subject to a special case. But upon argument the Court of Exchequer also were equally divided in opinion (*m*). Judgment, however, was given for the plaintiff, and that judgment was ultimately upheld in the Exchequer Chamber, though not without some difference of opinion amongst the members of the Court (*n*).

It is in general the duty of the purchaser to tender the deed of transfer to the vendor for execution, as in the case of a sale of realty; that is to say, the purchaser cannot *bring an action* against the latter, for a breach of contract, in not delivering or transferring the shares, without averring and proving such tender of the deed on his part (*o*). But by the custom of the stock exchange, and it is believed most other share markets, it is the duty of the vendor to prepare the

(*k*) *Taylor v. Great Indian Peninsular R. Co.*, 28 Law J. (Chan.) 285, 709; 4 De G. & J. 559. See *Cottam v. Eastern Counties R. Co.*, 1 Hemm. & John. 243.

(*l*) *Ex parte Swan*, 7 C. B. (N. S.) 400; S. C. 30 L. J. (C. P.) 113. See also *Tupper v. Foulkes*, *ib.* 214.

(*m*) *Swan v. North British Australasian Co.*, 31 Law J. (Exch.) 425; 7 H. & N. 603.

The judgments in this case, in all three Courts, are well worthy of perusal, but are too long for insertion here.

(*n*) 32 Law J. (Exch.) 273; 2 H. & C. 175.

(*o*) *Stephens v. De Medina*, 4 Q. B. 428; *Bowlby v. Bell*, 3 C. B. 294; 16 Law J. (C. P.) 18; 10 Jur. 669, S. C.

transfer deed and reclaim the amount of the stamps from the purchaser (*p*). If the transfer requires the assent of the directors to make it valid, it depends a good deal, if not entirely, on the usage of the stock exchange in which the shares were purchased, whether it is the duty of the vendor or of the purchaser to obtain such consent. In general, it would seem that there is no absolute undertaking on the part of the vendor to obtain it. He is responsible, indeed, for the genuineness and regularity of all documents delivered, and bound to execute a transfer; but it is the duty of the purchaser to execute and duly lodge such documents for verification and registration in the books of the company, and to obtain a certificate of registration; and it would therefore seem to be the purchaser's duty, in the first instance, to endeavour to obtain the consent of the directors. At the utmost, the vendor is only bound to obtain such consent after the purchaser has done what is reasonable to obtain it in the usual course (*q*).

The deed of transfer.

An auctioneer who sells shares at a public auction, without declaring the name of his principal, makes himself personally responsible for the fulfilment of the contract of sale (*r*).

If shares are sold and the vendor prepares a deed of transfer, and demands the name of the transferee, which is refused, and the contract abandoned by the vendee, the vendor may sue the vendee for refusing to accept the shares; and, although at the time the deed of transfer was tendered there were calls unpaid, the defendant cannot set up as an answer that the plaintiffs were not ready and willing to transfer the shares, because when the plaintiffs demanded the name of the purchaser, they were in a condition, by paying the call, to make a valid transfer (*s*).

If a vendee of shares has been induced to purchase them by means of false statements made by the vendors, as to material facts relating to the condition and prosperity of the company, equity will decree the re-payment of the purchase money with interest, and the re-transfer of the shares to the fraudulent vendors (*t*). But if between the making of the contract and the discovery of the fraud, the vendee receive dividends or otherwise deal with the shares, he could not treat the contract as void and sue as for money had and received,

(*p*) See also *Shaw v. Rowley*, 16 Law J. (Exch.) 180; 11 Jur. 911. In *Taylor v. Stray*, 26 Law J. (C. P.) 185, 287, the vendor, being anxious to get rid of his shares, prepared and executed and tendered to the purchaser a transfer.

(*q*) See *Stray v. Russell*, 28 Law J. (Q. B.) 279; 1 E. & E. 888; 29 Law J. (Q. B.) 115. But see also *Leman v. Lloyd*, 14 Law J. (Q. B.) 165; *Wilkinson v. Lloyd*, 7 Q. B.

43, in which cases, however, the contract was not made on the Stock Exchange; the difference of these cases is further explained in *Stray v. Russell*.

(*r*) *Franklyn v. Lamond*, 4 C. B. 637; 16 Law J. (C. P.) 221.

(*s*) *Shaw v. Rowley*, 5 Railw. Cas. 47; 16 Law J. (Exch.) 180; 11 Jur. 911.

(*t*) *Stainback v. Fernley*, 9 Sim. 566.

The deed of transfers.

but must bring an action on the deceit, and recover his real damage (*u*). So if directors make false representations for the purpose of fictitiously enhancing the price of shares for their own benefit, and a purchaser is thereby deceived and induced to purchase shares greatly beyond their value, the transfer of the shares will be set aside (*x*); and the directors making such false representations will be liable to an action for damages at the suit of the purchaser (*y*). Moreover, in order to sustain such an action it is not necessary that the representations should have been made personally to the plaintiff; the publication of a false report is sufficient if the plaintiff was thereby induced to purchase (*z*).

Forged transfer.

It may here be remarked that the company are bound to replace stock transferred by a forged transfer, as a forged deed is a mere nullity (*a*).

The register of transfers.

The transfer must be duly entered in the register of transfers in the manner directed by the statute, inasmuch as the body of shareholders agree to carry on the undertaking under all the provisions contained in the act of Parliament. The Court of Exchequer in one case held that an informal transfer would not bind the company (*b*). But, in the same case, it was afterwards ruled in equity, and that ruling was upheld in the House of Lords, that as the transfer was made in the usual manner by the secretary of the company, and was subsequently adopted by the company as being regularly made, the transaction was valid as between the company and the original transferor (*c*).

(*u*) *Clarke v. Dickson*, E. B. & E. 148; 27 Law J. (Q. B.) 223.

(*x*) *Burnes v. Pennell*, 2 H. L. C. 522; see ante, 48, note (*g*), and 77, note (*u*). See also *Nicol's Case*, 28 Law J. (Chan.) 257; 3 De G. & J. 387, et cas. ib. cit.; *Frowd's Case*, 30 Law J. (Chan.) 322; *Conybeare v. New Brunswick and Canada R. Co.*, 29 Law J. (Chan.) 435; which last case, however, was reversed in the House of Lords, on the ground that the plaintiff had full knowledge of the facts, 31 Law J. (Chan.) 435.

(*y*) *Bagshaw v. Seymour*, 18 C. B. 903; *Bedford v. Bagshaw*, 29 Law J. (Exch.) 59; *Scott v. Dixon*, 29 Law J. (Exch.) 62, note (3). See also *Cullen v. Thomson*, 9 Jur. (N. S.) 85; 6 Law T. (N. S.) 870; *Collingwood v. Berkeley*, 15 C. B. (N. S.) 145.

(*z*) *Ibid.*

(*a*) *Taylor v. Midland R. Co.*, 29 Law J. (Chan.) 731; 31 Law J. (Chan.) 336; 8 H. L. C. 751. But where the secretary of a joint stock company fraudulently transferred shares, and the proprietor of the shares treated the transaction as being valid against the transferee, but filed a bill against the company for damages, it was held that

he was not entitled to relief. *Duncan v. Huntley*, 2 Macn. & Gord. 30; 2 Hall & Twells, 78.

(*b*) *Bosanquet v. Shortridge*, 4 Exch. 699; 20 Law J. (Exch.) 57.

(*c*) *Shortridge v. Bosanquet*, 16 Jur. 919; 16 Beav. 84; S. C. in the House of Lords, nomine *Bargate v. Shortridge*, 5 H. L. C. 297; and see *Burnes v. Pennell*, 2 H. L. C. 497; *Ex parte Bagge*, 15 Jur. 459. In one case, Lord St. Leonards, C., observed on this important subject of informal transfers of shares, "I do not say that directors can act in contravention of their powers—that if they abuse their powers, as between themselves and the general body of the shareholders, they can maintain an act done in violation of their powers. But that is a totally different question from that which is now before me, namely, whether, if directors, not pursuing or obeying their deed of settlement in respect of particular transactions, do choose to adopt a new rule, and hold out to the public that that new plan of theirs is a binding one, and men advance their money on the faith of that dealing, and they acknowledge a person who comes in under an imperfect transaction as a pur-

The deed of transfer *must be delivered to the secretary* of the company, who enters a memorial thereof in "The Register of Transfers," and delivers to the purchaser a new certificate, or indorses a memorandum of the transfer on the old one (*d*). Until a transfer has been thus delivered, the vendor continues liable for all calls, and the purchaser is not entitled to receive profits, or to vote: (8 & 9 Vict. c. 16, s. 15, post, App. 26.) No shareholder may transfer any share after any call shall have been made in respect thereof until he has paid such call, nor until he has paid all calls for the time being due (*e*) on every share held by him: (Sect. 16.)

The register of transfers.

The meaning of this section is, that, during the time that the calls remain unpaid, the right to transfer the shares is taken away, and the deed of transfer is altogether null and void as against the company, though valid as between the parties, so that the company may refuse to register such a transfer, although the calls have been subsequently paid up (*f*). In such a case it would be necessary to re-execute the deed of transfer, before the company can be compelled to register it (*g*). A different question would, however, arise, if the deed had been delivered as an escrow, to take effect upon payment of the calls by the transferor (*h*).

If shares are sold, and the transfer signed by the vendor, but the vendee neglects to register it, so that the company are entitled to demand payment of calls made subsequently to the sale from the vendor, whose name remains on the register, a bill for specific per-

chaser and shareholder, and he admits and treats himself as bound by that which may be, and I assume it to be, an informal transaction, I say it is a totally different question altogether, and a distinct question, whether such a course of dealing will not operate so as to bind both parties, although the deed of settlement, in respect to formalities, is not obeyed, but a course of dealing and transaction has been adopted which may be considered, in point of fact, in direct opposition to the provisions of the deed of settlement. There would be no safety for mankind in dealings of this nature, extensive as they are, with so much money embarked in them, if the courts had ever held, as they never have held, that every minute circumstance must be observed, which the directors themselves ought to have observed; but if they disregard them, if the shareholders do not call them to account for doing so, if a course of action has been adopted in the particular company without complaint, although they may have arrived at making a man a shareholder, by what I should call a short cut, instead of going through all the necessary formalities,—that may be perfectly good as between parties thus dealing with the directors and the directors themselves, so as

to bind them." *Ex parte Strafford*, 22 Law J. (Chan.) 194; 16 Jur. 435. See also *Bargate v. Shortridge*, ubi supra; *Grady's Case*, 32 Law J. (Chan.) 326; *Lane's Case*, 33 Law J. (Chan.) 84.

(*d*) *Wilkinson v. Lloyd*, 7 Q. B. 27; 9 Jur. 328; and see ante, p. 106. It would seem that companies have no right, except perhaps in cases of forgery or fraud, to cancel an entry and remove a person's name from the register. *Hare v. L. and N. W. R. Co.*, 30 Law J. (Chan.) 821, note; 2 Johns. & Hemm. 80; *Ward v. South-Eastern R. Co.*, 29 Law J. (Q. B.) 177.

(*e*) See 32 Law J. (Chan.) 637, and *R. v. Inns of Court Hotel Co.*, 32 Law J. (Q. B.) 369.

(*f*) *R. v. Wing*, 17 Q. B. 645.

(*g*) It is, however, very questionable whether a fresh deed would not be necessary, or at least a fresh stamp. See *London and Brighton R. Co. v. Fairclough*, 2 M. & G. 674.

(*h*) *Hall v. Norfolk Estuary Co.*, 16 Jur. 149; 21 Law J. (Q. B.) 94. A transfer made when the name of the vendee is left in blank is void, ante, p. 107. But the shares do not remain in the "order and disposition" of the transferor. *Morris v. Cannan*, 31 Law J. (Chan.) 425.

The register of transfers.

formance of the contract may be maintained by the vendor, to compel the vendee to register the transfer and pay the calls (*i*). The principle is, that when shares are sold, it must be taken to be part of the contract, that the vendor should be indemnified by the purchaser from all liability in respect of subsequent calls made on the shares (*k*).

So where certain railway shares were sold by auction, and the purchaser paid his purchase money, but did not take a transfer of the shares, and then sold to a third party, who refused to register himself as owner of the shares, and calls were made on the shares, which were left unpaid; it was held, that the original vendor was entitled to a decree for specific performance, against the original purchaser (*l*). If, through the neglect of the purchaser of shares to register them, the vendor is compelled to pay calls, he cannot recover the money back as money paid to the defendant's use (*m*); but he may maintain an action against the purchaser upon his implied promise to indemnify the vendor (*n*).

Refusal to register.

If the company, without cause, refuse to register shares and deliver new certificates after the deed of transfer has been sent to the secretary, such a breach of duty would entitle him to sustain an action for damages against the company (*o*); and he might also obtain from the Court of Queen's Bench a mandamus at common law (*p*), or under the provisions of the Common Law Procedure Act, 1854—peremptory in the first instance, if there were no issues of fact to be tried—commanding the company to register the transfer (*q*). Moreover, it is clearly a wrongful act, for which an action for damages may be sustained, if, in consequence of the refusal of the company to

(*i*) *Shaw v. Fisher*, 2 De G. & S. 11; 12 Jur. 152; 5 De G., M. & G. 596; *Wynne v. Price*, 3 De G. & S. 311; 13 Jur. 295. It is said in this case that shares are sometimes sold on the Stock Exchange, on the terms that the purchaser shall give a guarantee of registration; but Sir K. Bruce, V. C., held, that the offence of such a stipulation made no difference.

(*k*) *Jacques v. Chambers*, 4 Railw. C. 502, per Sir K. Bruce, V. C.

(*l*) *Shaw v. Fisher*, ubi supra.

(*m*) *Sayles v. Blane*, 6 Railw. Cas. 79; 19 Law J. (Q. B.) 19; 14 Q. B. 205.

(*n*) *Walker v. Bartlett*, 18 C. B. 845.

(*o*) See the form of a declaration against the East India Company, for refusing to transfer stock, which was held insufficient, because it was not alleged that the name of the transferee was presented to the company, at the time of the proposal to transfer. *Gregory v. East India Co.*, 7 Q. B. 199. See also *Wilkinson v. Anglo-Californian Gold Mining Co.*, 18 Q. B. 728; *Stewart*

v. Same Co., 18 Q. B. 736; and cases cited *infra*, note (*o*).

(*p*) *R. v. General Cemetery Co.*, 6 E. & B. 415.

(*q*) *Copeland v. North Eastern R. Co.*, 6 E. & B. 277; *Norris v. Irish Land Co.*, 8 E. & B. 512; 27 Law J. (Q. B.) 115; *Ward v. South-Eastern R. Co.*, 29 Law J. (Q. B.) 177. See also *R. v. Worcester Canal Co.*, 1 M. & R. 529; *R. v. Liverpool and Newcastle R. Co.*, 21 Law J. (Q. B.) 284; 16 Jur. 949. In *R. v. Midland Counties and Shannon R. Co.*, 9 Law T. (N. S.) 151, the Court of Queen's Bench in Ireland, on the application of the transferee, granted a mandamus to register a transfer of shares to a pauper, though the consideration was a mere fiction, and the transfer was made to get rid of liability, but was not subject to any secret trust for the benefit of the transferor. But in *R. v. Same Co.*, *ibid.* 155, the same court refused, on the application of the transferor, to grant a mandamus to register a transfer to an infant.

register a transfer, calls were not paid, and the company thereupon proceeded to declare the shares forfeited, and afterwards sold them (r).

The register of transfers may be closed for a certain number of days before each ordinary meeting, and any transfer made whilst the register is so closed as between the company and the transferee, is considered as made subsequently to the ordinary meeting: (8 & 9 Vict. c. 16, s. 17, post, App. 27.)

If a share becomes transmitted by death, bankruptcy (s), insolvency, marriage, or by other similar means, the directors may require the transmission to be authenticated by a declaration in writing, which must be left with the secretary, who thereupon enters the names of the persons entitled in the register of shareholders. Until a transmission be so authenticated, no person entitled can share in the profits, or vote: (Sect. 18.) A copy of the register of the marriage, and an extract of the probate or letters of administration, must be produced to the secretary, when shares are transmitted by marriage or death (t): (Sect. 19.) The company are not bound to see to the execution of any trust, to which shares may be subject; and receipts for money, given by the person in whose name any share stands in the books, are a sufficient discharge to the company (u): (Sect. 20.)

Transmission of shares.

4. Forfeiture of Shares.

With respect to the forfeiture of shares, the Companies Clauses Act enacts, that, if any shareholder fail to pay any call payable by him, the directors may, if the call is not paid within two months after it becomes due, declare the share forfeited; and that whether the

4. Forfeiture of Shares.
For non-payment of calls.

(r) *Catchpole v. Ambergate R. Co.*, 1 E. & B. 111; and see *Wilkinson v. Anglo-Californian Gold Co.*, 18 Q. B. 728; 21 Law J. (Q. B.) 327; *Cockerell v. Van Diemen's Land Co.*, 18 C. B. 454.

(s) As to when shares remain in the order and disposition of a bankrupt, see *Thompson v. Speirs*, 14 Law J. (Ch.) 453; *Ex parte Lancaster Canal Co.*, Deac. & Chit. 411; *Ex parte Watkins*, 2 Mont. & A. 348; *Ex parte Harrison*, 3 Mont. & A. 356; *Ex parte Orde*, 1 Deac. 166; *Ex parte Vallance*, 3 Mont. & A. 225; *Ex parte Boulton*, 26 Law J. (Bank.) 45. It has been held, that after the execution of a transfer in blank, shares were not in the order and disposition of the transferor. *Morris v. Cannan*, 31 Law J. (Ch.) 425; and see ante, 107.

(t) As to the court in which probate or letters of administration ought to have been granted before the establishment of the Court of Probate, to pass an interest in shares, see *Ex parte Horne*, 7 B. & C. 632; S. C. 1 Man. & Ry. 529; *Smith v. Stafford*,

2 Wils. 166; *R. v. Trustees of Balby Roads*, 22 Law J. (Q. B.) 164; Bail C. C. 134; and see further on sects. 18 and 19, 29 Law J. (C. P.) 123.

(u) It seems that a mortgagee of shares should give notice of his incumbrance to the company, otherwise he may lose his lien. *Cumming v. Prescott*, 2 Y. & Coll. 448; *Ex parte Waithman*, 1 Mont. & A. 364; *Martin v. Sedgwick*, 9 Beav. 333. Shareholders cannot get rid of their liability to pay calls, except in the mode pointed out in the statute, even in cases where they hold the shares under a trust for the company. *Preston v. Grand Collier Dock Co.*, 11 Sim. 327; S. C. 2 Railw. C. 350. And if directors accept an informal surrender of shares upon an agreement that the surrenderer shall not be required to pay any further calls, a court of equity would probably grant an injunction to restrain an action to recover calls brought against other shareholders. *Playfair v. Birmingham, Bristol and Thames Junction R. Co.*, 1 Railw. C. 640.

For nonpayment
of calls.

company have sued for the call or not: (8 & 9 Vict. c. 16, s. 29, App. 28.) But before a share can be declared to be forfeited, the directors must give twenty-one days' notice to the shareholder, such notice to be sent as is prescribed in the act (*x*): (Sect. 30.) Nor does the declaration of forfeiture take effect until it has been confirmed at a general meeting of the company; and such general meeting may direct the forfeited share to be sold, or otherwise disposed of (*y*): (Sect. 31.) Forfeited shares may be sold by public auction or private contract: (Sect. 32.) A good title to the purchaser of a forfeited share may be made in the manner prescribed in the act: (Sect. 33.) The company may not sell more shares belonging to a defaulter than are sufficient to pay the calls due and interest and expenses; and the overplus, if any, must be paid to the defaulter: (Sect. 34.) And if the calls, interest, and expenses are paid by the defaulter before the sale of the share, the share reverts to him: (Sect. 35.)

The remedy is
cumulative.

It is to be observed, that, by the express words (*z*) of the twenty-ninth section, the share may be forfeited, although an action has been brought to recover the calls. The remedy is therefore cumulative; and it has accordingly been decided that it is no answer to an action brought to recover calls, to plead that the shares had been forfeited and sold, before the action was brought (*a*). Neither is it an answer to such an action to plead that, after it was brought the shares were forfeited and cancelled, and that the company, under the provisions of the special act, had issued new shares, in lieu of those which were cancelled. But in either of the above-mentioned cases, the party sued is entitled, on motion, to the benefit of the sale of the shares, or the value of the new shares, in satisfaction *pro tanto* of the debt due for calls; and on payment of the residue of the debt and costs, the Court will stay the proceedings (*b*).

If shares are about to be declared forfeited for non-payment of calls, and the party liable to pay the calls has a set-off against the

(*x*) When equity will not relieve a shareholder whose shares have been forfeited, for non-payment of calls, although the omission to pay the calls arose from accidental circumstances, see *Sparks v. Liverpool Waterworks Co.*, 13 Ves. 428; and see *Burdett v. Rawson*, 9 Jur. 341; *Stewart v. Anglo-Californian Gold Co.*, 21 L. J. (Q. B.) 393; 18 Q. B. 736.

(*y*) If it is necessary to plead that shares have been forfeited, the plea will be bad, unless it avers that the forfeiture was confirmed at a general meeting of the company. *Edinburgh, Leith and Newhaven R. Co. v. Hebblewhite*, 6 M. & W. 707.

(*z*) If this provision had not been inserted, it seems that both remedies could not have been resorted to. In *Giles v. Hutt*, 3 Exch. 18; 18 L. J. (Exch.) 53, the

directors of a company, acting under a deed, commenced an action, and proceeded to judgment against the plaintiff in *audita querela*, for the recovery of the calls due upon certain shares, and subsequently came to a resolution declaring the shares to be forfeited; but the Court held that the directors were not at liberty to adopt both remedies, and that, by proceeding to judgment for the full amount of the calls, the declaration of forfeiture was altogether void.

(*a*) *Great Northern R. Co. v. Kennedy*, 4 Exch. 417; 19 L. J. (Exch.) 11; 6 Railw. C. 5; 7 D. & L. 197.

(*b*) *Inglis v. Great Northern R. Co.* (in House of Lords), per Lord St. Leonards, C., 16 Jur. 895.

claim, in the shape of a demand for interest due on paid-up calls, the proper remedy is to apply to a Court of Equity for relief (*c*).

As we have already seen (*d*), if shares are wrongfully declared to be forfeited, the shareholder may bring an action against the company.

By the Companies Clauses Act, 1863 (*e*), power is given to the company to cancel forfeited shares if they cannot be sold for enough to pay arrears of calls, interest and expenses; but the cancellation does not affect the liability of the last registered holder to pay arrears of calls, interest and expenses: (Sect. 6.)

5. *Traffic in Shares and Scrip, on the Stock Exchange.*

There were few transactions in shares upon the Stock Exchange prior to the year 1824. The first quotation of this species of property occurs in the list published in that year, where an entry appears under the head of "Iron Railways." At that time there were very few railway shares in the market. A daily Price List of Shares is now published, with the sanction of the committee of the Stock Exchange. The members of the Stock Exchange consist of brokers, and dealers or jobbers. The broker is, in most instances, a sworn broker, qualified to act by admission before the corporation of the City of London. His legitimate province is limited to the transaction of business for his principals. He purchases and sells public securities and shares, for persons desirous to possess or dispose of them. The dealer or jobber acts as an intermediate party between the broker who buys, and the broker who sells (*f*); and the advantage he derives, is a small difference of price between the two transactions. When a broker has received an order from his principal, he applies to a jobber, who, being always aware of the prices of shares, enters into a contract with the broker, to buy or sell the shares, as the case may be, at the market price (*g*).

History of share transactions on the Stock Exchange.

There are certain account days in the year, called settling days, when bargains made between buyers and sellers of shares, on the Stock Exchange, are adjusted. Sometimes, instead of transferring the shares, and closing the account on the settling day, the shares are carried on to a future day, on such terms as the parties may agree upon. This is called *a continuation* (*h*).

Settling days and continuations.

(*c*) *Naylor v. South Devon R. Co.*, 1 De G. & S. 32; 11 Jur. 31.

(*d*) Ante, 112, 113.

(*e*) 26 & 27 Vict. c. 118, s. 4, post, App.

(*f*) Keyser on the Stock Exchange, 22, 220.

(*g*) *Morris v. Langdale*, 2 B. & P. 284. Brokers are liable to the bankrupt laws by

12 & 13 Vict. c. 106, s. 65, which section was not repealed by 24 & 25 Vict. c. 134.

(*h*) These transactions are sometimes mere wagers; and although it was decided that the 7 Geo. 2, c. 8, (which however was repealed by 23 & 24 Vict. c. 28,) applied only to jobbing in the English public funds, *Oakley v. Rigby*, 2 Bing. N. C. 732; S. C.

Contracts relating to shares are subject to the rules of the Stock Exchange.

The time fixed for the completion of an executory contract, for the sale and purchase of shares, is in most cases liable to be controlled, regulated and altered by the custom and usage of the Stock Exchange. If particular days are set apart by the usage of the stock market, for the settlement of accounts between brokers, and between brokers and their customers, and for the delivery and transfer of shares that have been agreed to be bought and sold in the intervening period, all contracts for the sale and purchase of shares, to be completed on a particular day, will be deemed to be made for the next settling day, that will arrive after the time so appointed (i). But when no time is specified for the completion of the contract, the printed rules and customs of the Stock Exchange are admissible in evidence to show what is a reasonable time, under all the circumstances of the case, for the fulfilment of the bargain, by the execution, on the part of the vendor, of the deed of transfer of the shares, and the payment, on the part of the purchaser, of the purchase-money (k).

If, therefore, there is, at a particular place, an established usage in the manner of dealing and making contracts, a person who is employed to deal or make a contract there, has an implied authority to act in the usual course. Thus, where the defendant authorized the plaintiff, a broker, to sell for him twenty railway scrip shares, and the plaintiff sold them to C., another broker, but the scrip shares not being delivered on the day, C. bought twenty other scrip shares at the market price, and claimed the difference between the contract and the market price, and the plaintiff paid him the difference, and afterwards brought an action against the defendant to recover this sum: and it being proved to be the usage amongst brokers at that market to be responsible to each other, upon these contracts, and

2 Hodges, 42, and not in railway shares, *Hewitt v. Price*, 4 M. & G. 355, it is necessary to consider the effect of the 18th section of the 8 & 9 Vict. c. 109, which enacts, "That all contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void, and that no suit shall be brought or maintained in any court of law or equity, for recovering any sum of money or valuable thing alleged to be won upon any wager." This section applies to transactions relating to the purchase and sale of shares for the account, when neither of the contracting parties contemplate a bona fide purchase or sale of the shares. *Grizewood v. Blane*, 21 L. J. (C. P.) 46; S. C. 19 L. T. 64; 11 C. B. 538; *Re Morgan*, 30 L. J. (Bank.) 1; *Barry v. Croskey*, 2 Johns. & Hemm. 1. But a broker who has paid "differences" for his principal, may recover the amount notwithstanding this statute. *Jessopp v. Lutwyche*, 10 Exch. 614; *Knight v. Cambers*, 15 C. B. 562; *Knight v. Fitch*, 15 C. B.

566; *Rosewarne v. Billing*, 33 L. J. (C. P.) 55. Where an action was brought for the price of scrip, bought for the account of the defendant, the plaintiff was required to show by particulars of demand the names of the persons from whom, and the price at which, the scrip was bought, and the date of the purchase, within a few days. *Berkeley v. De Vere*, 15 L. J. (Q. B.) 323; 4 D. & L. 97. When stockbrokers may decline to answer searching interrogatories as to transactions on the Stock Exchange, on the ground that the answers would subject them to penalties, see *Short v. Mercier*, 20 L. J. (Ch.) 289, where Lord Cottenham, C., affirmed Sir K. Bruce's, V.C., judgment, 18 L. J. (Ch.) 490. And see *Green v. Weaver*, 1 Sim. 404.

(i) *Fletcher v. Marshall*, 15 M. & W. 755; *Bayliffe v. Butterworth*, 17 L. J. (Exch.) 79; 11 Jur. 1019; *Mortimer v. McCallan*, 6 M. & W. 58.

(k) *Stewart v. Cauty*, 8 M. & W. 160.

also that the defendant was cognizant of this usage (*l*), it was ruled that the plaintiff was entitled to recover (*m*). But a principal is only bound by such rules of the Stock Exchange as are in force at the time of the contract. In *Westropp v. Solomon* (*n*) the facts were, that the defendant employed the plaintiffs, stockbrokers, to sell for him some scrip certificates in a projected railway, and delivered the certificates to them for that purpose. The plaintiffs afterwards sold them and paid the defendant the proceeds of the sale. The certificates were afterwards discovered to be forged, and the plaintiffs were then called upon by the purchasers, to pay them the value put on them by a resolution of the Stock Exchange committee—come to subsequently to the sale by the plaintiffs. The plaintiffs accordingly paid those sums, which were larger than the sums for which they had sold the certificates, and the action was brought to recover the sums so paid by the plaintiffs. The defendant paid the amount received by him from the plaintiffs, with interest, and denied his liability to pay more, and it was decided that the plaintiffs were not entitled to recover the excess. The first count failed, inasmuch as the law only implies a promise by a principal, to indemnify his agent when acting according to his instructions, and no express promise was proved; the common counts also failed because the sale was void on account of the forgery, and the purchasers were therefore (independently of Stock Exchange rules) entitled to nothing more from the plaintiffs, than the sum the purchasers had paid them, and, consequently, the plaintiffs could recover no more from the defendant. And it was also held, that no difference was produced by the Stock Exchange resolution, it being made subsequently to the sale by the plaintiffs, and there being no rule of the Stock Exchange, at the time of the sale, which required brokers to be bound, in respect of their contracts, by resolutions to be made on the subject.

Contracts relating to shares are subject to the rules of the Stock Exchange.

Westropp v. Solomon.

If, therefore, a sharebroker has been compelled, by the custom of the Stock Exchange, to pay money on account of his principal, he has a remedy over against the latter (*o*). But he can maintain such an action in those cases only, where he has paid money in discharge of some liability, which he has properly incurred in the regular discharge of his duty as a broker (*p*). And where a broker, in behalf of his principal, purchased shares, which were liable to a call, it was held to be the duty of the principal to supply the broker with money to meet the call (*q*).

Remedies of brokers against their principals.

(*l*) This fact seems to be immaterial, *Child v. Morley*, 8 T. R. 610; *Sutton v. Tatham*, 10 A. & E. 27.

(*m*) *Bayliffe v. Butterworth*, 1 Exch. 425.

(*n*) 8 C. B. 345.

(*o*) *Pollock v. Stables*, 12 Q. B. 774; 17 L. J. (Q. B.) 354; *Bayley v. Wilkins*, 7 C. B.

899; 18 L. J. (C. P.) 273; *Taylor v. Stray*, 26 L. J. (C. P.) 185, 287; 2 C. B., N. S. 175.

(*p*) *Bowlby v. Bell*, 3 C. B. 284; 16 L. J. (C. P.) 18.

(*q*) *M'Ewen v. Woods*, 11 Q. B. 13; 17 L. J. (Q. B.) 206; and see *Bayley v. Wil-*

A broker is not responsible if forged scrip should be issued.

A sharebroker employed to buy or sell shares or scrip of a railway company, does not thereby undertake to procure them absolutely and at all events, but only to use due and reasonable diligence to endeavour to do so (*r*). And if a sharebroker, directed to buy shares, buys what is ordinarily bought and sold in the stock market as shares, he has fulfilled his commission, and cannot be made responsible for the fraud or misconduct of parties who may have issued the shares without authority. There is no warranty or undertaking on the part of a broker employed to buy shares or scrip, that the article which merely passes through his hands is anything more than what it purports on the face of it to be, and what it is generally understood to be in the market (*s*). Thus where A. gave an order to B., a stockbroker, to purchase shares in a foreign railway, and there being no shares in the market, B. bought a letter of allotment, it being the practice of the Stock Exchange at that time to buy and sell letters of allotment as shares in that railway—in an action to recover the value of the shares and the broker's commission, it was decided, that the question for the jury to determine was, whether the order to buy had reference to that which alone could be bought in the market, at that time, or was an order to buy at a future time, when, by the passing of the foreign act, actual shares would be transferable and purchasable (*t*).

Lamert v. Heath.

So where the directors of a railway, called "The Kentish Coast Railway Company," having resolved not to issue scrip, some of the members, without their knowledge, issued scrip, signed by the secretary, from the office of the company; this scrip found its way into the share market, and was sold at a premium. The plaintiff employed his broker to buy some "Kentish Coast Railway Scrip;" and the broker applied to the defendant, who sold him some of the above scrip. In an action to recover the price paid to the defendant, as having sold a spurious article, it was decided, that the question for the jury was, whether the plaintiff intended to buy, and the defendant to sell, that which was current in the market, as Kentish Coast Railway scrip, or the real scrip of that company (*u*).

kings, 7 C. B. 886; 18 L. J. (C. P.) 273. When the broker is entitled to recover from his principal sums paid by him for deposits, after having delivered an incorrect account, omitting such payments, see *Dails v. Lloyd*, 12 Q. B. 531; 17 L. J. (Q. B.) 247. See also *Townsend v. Crowdy*, 29 L. J. (C. P.) 301.

(*r*) *Fletcher v. Marshall*, 15 M. & W. 755. See also *Turpin v. Bilton*, 5 M. & G. 455.

(*s*) Addison on Contracts, 5th ed. 191. But if a broker sell stock, shares or debentures for an undisclosed principal, and sign the sold note, he is responsible for any loss sustained by the purchaser through the fraud of the undisclosed principal, although the purchaser knew that he was dealing with a broker. *Royal Exchange Insurance Co. v. Moore*, 11 Weekly Rep. 592.

(*t*) *Mitchell v. Newhall*, 4 Railw. C. 300; 15 M. & W. 308.

(*u*) *Lamert v. Heath*, 15 M. & W. 487; 4 Railw. C. 302. See also *Jones v. Downman*, 4 Q. B. 235; *Midland Great Western R. Co. v. Gordon*, 16 M. & W. 808.

By 23 & 24 Vict. c. 111, schedule, title Contract Note (x), "Any note, memorandum or writing, commonly called a contract note, or by whatever name the same may be designated, for or relating to the sale or purchase of any government or other public stocks, funds or securities, or any stocks, funds or securities, or share or shares of or in any joint stock or other public company, to the amount or value of 5*l.* or upwards," is subject to a stamp duty of one penny. And by sect. 7, "the stamp duty on contract notes may be denoted either by impressed or adhesive stamps, and in any case where a contract note is made and the same is not written on an impressed stamp, there shall be affixed thereon a proper adhesive stamp, and every person who shall make or sign a contract note to which an adhesive stamp shall be affixed, shall effectually cancel and obliterate the stamp by writing upon or across it his name or the name of his firm or the initials thereof respectively, and by adding thereto the date of such cancelling, and so and in such manner that the said stamp cannot be used upon or for any other document or writing (y); and if any person shall make or sign any contract note by this act chargeable with stamp duty, without the same being duly stamped to denote the said duty, or shall refuse or neglect to cancel and obliterate as aforesaid any adhesive stamp affixed thereon, he shall forfeit the sum of twenty pounds, and no charge for brokerage, commission, agency or otherwise, made or to be made by any broker, agent or other person in or about the sale or purchase mentioned, or referred to in any contract note made or signed by him, shall be lawful unless such contract note shall be duly stamped and the stamp thereon if adhesive properly cancelled."

Stamp on contract notes.

We have already seen that the transfer of shares must be made in accordance with the directions contained in the Companies Clauses Act (z); and that by analogy with the rule as to the conveyance of real property, it has been decided, that it is the duty of the purchaser of shares to prepare the necessary transfer and to incur the expense of the stamps, unless indeed it appears by the terms of the contract, or by the usage of the market, that the seller is to prepare and pay for

Obligations relating to the transfer of shares.

(x) Brokers' notes were formerly held not to require a stamp, not being agreements between party and party. *Joseph v. Pebrer*, 1 C. & P. 341; *Tomkins v. Savory*, 9 B. & C. 704. In *Knight v. Barber*, 2 C. & K. 333; 16 M. & W. 66; 16 L. J. (Exch.) 18; 4 Railw. C. 674, it was held that an agreement between the plaintiff and the defendant for the sale of railway scrip required an agreement stamp, such scrip not being "goods, wares or merchandize" within the exemption in the Stamp Act, 55 Geo. 3, c. 184, Sched. Part I., tit. "Agreement."

an adhesive stamp used for denoting any stamp duty is required by law to be cancelled by any person by writing thereon his name, or the name of his firm, it shall be sufficient if instead of the name in full, the initials thereof shall be so written, or shall be stamped or impressed in ink thereon, together with any other particulars specially required by law to be written thereon: provided that, by means thereof, the stamp shall be effectually obliterated and cancelled so as not to admit of its being used again, anything in any act to the contrary notwithstanding."

(z) Ante, 106.

(y) By 24 & 25 Vict. c. 91, s. 33, it is further enacted, that "in any case where

the transfer (a). But it is clearly the duty of the seller to give the purchaser the means of placing his name on the register; and if, through the default of the former, the shares cannot be registered in the purchaser's name, an action will lie against the vendor (b). But if, by the terms of the contract, the purchaser is bound to pay a call on the shares, made before the sale, then the broker of the purchaser may pay the amount of the call to the broker of the seller, to enable the latter to make the transfer; and an action will lie against the purchaser at the suit of his own broker, to recover the money so paid on his account (c).

Mode of assessing damages.

Some cases have been decided as to the proper mode of assessing the damages, in actions relating to contracts in respect of shares. Thus in *detinue* for railway scrip, which had been delivered up to the plaintiff after action brought, it was ruled to be a proper direction to the jury, that in estimating the damages, they might take into consideration the difference in value of the scrip, at the time of the demand, and at the time of its delivery. Also, that inasmuch as the scrip had already been re-delivered, the verdict and judgment were properly confined to an assessment of damages for the detention (d).

In an action against a vendee for not accepting shares on a given day pursuant to contract, the proper measure of damages is the value of the shares on the day when the contract was broken, or on the earliest subsequent day when the shares could be sold (e).

So the vendee of shares in a projected railway, under a contract to be completed at a future day, may recover, as damages for the non-delivery, the difference between the price agreed on, and the market price of the day on which the sale should have been completed; but he is not entitled to damages in respect of a further advance of price taking place afterwards at the time of the actual issuing of the scrip (f).

In connexion with the subject now under our consideration, we annex some of the most important of the rules relating to bargains in shares and stock, as adopted by the Committee of the London Stock Exchange (g).

General Rules applicable to Stock Exchange Transactions.

Bargains must be fulfilled according to regulations of the Stock Exchange.

49. The Stock Exchange does not recognize in its dealings any other parties than its own members; every bargain, therefore, whether for account of the member effecting it, or for account of a principal, must be fulfilled according to the regula-

(a) *Stephens v. De Medina*, 4 Q. B. 422; *Bowlby v. Bell*, 3 C. B. 284; 16 L. J. (C. P.) 18. See Reg. 90, post, 122.

(b) Ante, 108; *Wilkinson v. Lloyd*, 7 Q. B. 27; *Stray v. Russell*, 28 L. J. (Q. B.) 279; 29 L. J. (Q. B.) 115.

(c) *Bayley v. Wilkins*, 7 C. B. 886; 18 L. J. (C. P.) 273.

(d) *Williams v. Archer*, 5 C. B. 318.

(e) *Pott v. Flather*, 11 Jur. 735; 16 L. J. (Q. B.) 366; 5 Railw. C. 85; *Stewart v. Cauty*, 8 M. & W. 160.

(f) *Tempest v. Kilner*, 2 C. B. 300; *Shaw v. Holland*, 15 M. & W. 136; *Powell v. Jessop*, 18 C. B. 336.

(g) These rules are extracted from the rules dated 1864.

tions and usages of the house; and should a principal without the consent of the committee attempt to enforce by law a claim against a member of the Stock Exchange, the committee will decide as to the liability of the broker or agent of such principal for any cost or damages incurred in consequence of legal proceedings.

54. The committee will not recognize any dealing in letters of allotment either of loans or shares in new companies.

55. A member applying for stock or shares of loans or public companies, and neglecting to pay the deposit on the same, shall be considered to have violated a contract, and shall be compelled to fulfil his engagement.

56. No clerk shall be allowed to apply for an allotment in loans or shares without the written sanction of his employer, who shall be responsible for the payment of the deposit on the stock or shares so applied for.

59. The committee will not take cognizance of bargains in prospective dividends of shares or stock of railway or other industrial companies; nor will they allow differences arising therefrom to be proved upon a defaulter's estate.

60. All disputes between members, not affecting the general interest of the Stock Exchange, shall be referred to arbitration; and the committee will not take into consideration such disputes unless arbitrators cannot be found, or are unable to come to a satisfactory decision.

65. The committee will not decide any question respecting the loss incurred by buying in or selling out stock, or other securities, unless such question be referred to them within fourteen days from the day on which such purchase or sale took place.

66. Buying in or selling out stock, shares, or other securities, must be effected publicly through the medium of a broker, who shall trace the transaction to the responsible party, and claim the difference thereon, except in the case of English stock; when the bought in or sold out ticket shall be passed directly to the person against whom such purchase or sale shall have been made.

Rules applicable both to English Stock and Stock and Shares of Public Companies.

78. A member having sold stock or other securities, and transferred or delivered the same according to the tickets or directions given him by the buyer, has a right to demand payment of such buyer; but in case the seller apply to the member whose name is on the ticket, and is either refused payment, or receives a cheque which is dishonoured, the buyer shall make immediate payment.

79. Every member may demand payment of the difference between the price marked on the ticket and that at which he may have sold the securities, when the sale shall have been made below the price existing at the time of the ticket being tendered; or, if sold above the existing price, he shall be entitled to receive up to the price of the day.

Rules applicable to Shares and Stock of Public Companies.

80. All bargains in shares or stock when no time is specified, and all bargains made before twelve o'clock on name days, shall be considered to be made for the existing account.

81. The committee will not take cognizance of any bargain in stocks or shares effected for a period beyond the end of the ensuing two accounts.

82. An offer to buy or sell an amount of shares or stock at a price named, is binding as to any part thereof that may be a marketable quantity; and an offer to buy or sell shares or stock when no amount is named, is binding to the amount of ten shares if in value under 500*l.*, or a number not exceeding in value that sum, or to the amount of 1,000*l.* stock.

83. The seller of registered shares or stock is responsible for the genuineness and regularity of all documents delivered, and for such dividends as may be received until reasonable time has been allowed to the buyer to execute and duly lodge such documents for verification and registration in the books of the respective companies. When the buyer shall have obtained an official certificate of registration of such shares or stock, the committee will not take cognizance of any subsequent dispute as to right or title, until the legal issue has been decided between the buyer of such stock or shares and the company that has acknowledged and registered the same; unless there should be any circumstances of a questionable nature on the part of

Dealings in letters of allotment not recognized.

A member to whom shares have been allotted on his application must pay the deposit.

No clerk to apply for shares or stock in public companies without consent of his employer.

Bargains in dividends not recognized.

Disputes—which to be referred to arbitration.

Questions respecting stock or shares bought in or sold out must be brought before committee within fourteen days.

Broker to be employed in case of buying in or selling out, &c.

The seller of stock has the right to claim direct payment of the buyer under certain cases.

Sellers of stock or shares may demand the difference of price between that marked on the ticket tendered to them and that at which it was sold.

When no time is specified, all bargains considered to be for existing account.

Limit as to time of dealing for future accounts.

An offer to buy or sell an amount of shares or stock binding as to any part thereof, &c.

Seller responsible for regularity of documents.

Transfers in blank not recognized.

When shares have been consolidated into stock, names must be passed for stock.

Sellers of shares or stock, who do not receive a transfer ticket from the buyer in proper time, may sell out the same.

Persons who receive tickets after two, or after three, required to mark the time on back of ticket.

If the person who splits a ticket passes on the original name, he will be required to trace it.

Penalty on making an alteration in or detaining a transfer ticket, &c.

Shares or stock must be transferred at the price marked on the ticket.

A pending call on shares may be paid by the seller.

Buyers of registered shares to pay stamps.

The buyers of shares or stock obliged to pay for any portion thereof, under certain limits.

Coupons or certificates must accompany transfer, &c.

How large coupons may be divided, &c.

the seller, when the committee reserve to themselves the right of inquiring into and deciding the case upon its merits. The reasonable expenses of any legal proceedings are to be borne by the seller.

84. The committee will not (except under special circumstances) interfere in any question arising from the delivery of shares, stock, bonds, or debentures in blank transfer.

85. When shares of railway or other companies have been converted into consolidated stock, and are so quoted in the authorized list, buyers are required to pass names for stock, and not for shares.

86. The buyer of stock, shares, bonds, or debentures, shall pass a ticket for the same at a marketable price and containing the name and address of the buyer before twelve o'clock on the name day, either in the Stock Exchange or at the office of the seller; and in the event of his not doing so, should the stock, shares, bonds, or debentures be sold out, the loss, if any, shall fall upon him; it is therefore required, if the ticket should not be passed before twelve o'clock, that the person taking it should certify the same on the back thereof. The time for selling out shall be from half-past two to three o'clock. If the ticket be regularly passed before twelve, the person holding it at two o'clock shall be responsible for the loss occasioned by selling out on that day; but should the stock or shares not be sold out until the following day, then the person who held the ticket at three o'clock on the preceding day shall be liable. Every person passing a ticket is required to write on the back of the ticket the name of the member to whom it is passed.

Every person who receives a ticket "after two o'clock" or "after three" on the name day shall notify the same on the back of the ticket by drawing a line or otherwise, in order to facilitate the tracing when shares are sold out; and any person neglecting to do so will be held responsible for any loss that may be incurred.

When the name day is fixed for a Saturday, the time for selling out shall be from half-past twelve to one o'clock, and the person holding the ticket at half-past twelve o'clock shall be liable.

Every member dividing a ticket shall retain the original ticket, that access may be had to it should any portion of the shares have been sold out; and any member who has passed on the original ticket shall be required to trace it, in the event of any portion of the stock or shares having been sold out.

Tickets may be left at the office of the seller up to one o'clock on name days.

87. A member who makes an alteration in a transfer ticket for stock or shares, or improperly detains the same, shall make good any loss that may occur thereby.

88. The seller of shares or stocks shall cause the same to be transferred at the price marked upon the ticket given him by the buyer; but the seller shall not be compelled to take a ticket for stock or shares at a price not quoted in the authorized list during the account, unless the bargain represented by such ticket shall have been made within the two preceding accounts.

89. The seller is authorized to pay any call made on registered shares, although not due, and to claim the same of the buyer.

90. The buyer of transferable shares or stock shall pay the *ad valorem* duty, and all expenses attending the conveyance of the same; and shall state on the ticket the amounts in which he may desire to have the shares or stock transferred (provided no such amounts require a higher stamp than 9*l.* 10*s.*), and the seller shall pay any increased expense caused by the subdivision of a ticket. Split tickets must bear the name of the original buyer.

91. The buyer of shares or stock shall, in the event of his ticket being divided, pay for any portion of the shares or stock which may be presented, provided the number be not less than ten shares, or the value less than 200*l.*

92. The buyer of stock or shares may refuse to pay for a transfer unaccompanied by coupons or certificates, unless it be certified thereon officially that the coupons or certificates are at the office of the company. But if the transfer presented be perfect in all other respects, the stock or shares must not be bought in until reasonable time has been allowed to the seller to obtain from the office the verification required. If the seller have a larger coupon than the amount of stock conveyed, or only one coupon representing stock conveyed by two or more transfers, the coupon may be deposited with the secretary of the share and loan department of the Stock Exchange, who shall forward it to the office of the company, and certify to that effect on the transfers, which shall then be a valid delivery. No person is to look to the managers or committee of the Stock Exchange, as being liable for the due or accurate performance of those duties, the managers and committee holding

themselves and being held entirely irresponsible in respect of the execution, or of any mis-execution, or non-execution of the duties in question.

93. The buyer is entitled to new shares or stock issued in right of old; but a member who has sold or taken in shares or stock, and afterwards, but previous to delivery, becomes entitled to new shares or stock, shall not be compelled to subscribe for the same, but may, after due notice, call upon the buyer, if he makes a claim, to complete the bargain forthwith.

94. The committee will entertain no claim for new shares attaching to the purchase of old ones, unless such claim shall have been made in writing within reasonable time, and any dispute with regard to a claim for new shares must be brought before them within ten days after the first settling day appointed for the delivery of the same.

95. In the event of sales of shares which carry with them shares not yet issued, and which cannot be conveyed by the transfer of the old, the committee will upon application fix a price at which the new shares shall be settled; and until the delivery of the new shares, the purchaser shall be entitled to deduct the amount so fixed from the purchase-money of the old shares or to reclaim it if already paid.

96. A member not refusing an antedated ticket when tendered as such, takes it with all its liabilities, but if it be passed as an ordinary ticket, the liabilities remain with the member putting such ticket again into circulation; and any person holding an undated ticket for shares shall not be liable for any loss arising from the shares having been bought in if he can show that such ticket had not been ten days in his possession.

97. A member, who shall allow two clear days to elapse without availing himself of his right to sell out shares or stock, shall release the buyer from all loss caused by the failure of any party, through whose default the ticket was not passed.

98. When stock or shares are sold out, if a ticket be not given within half an hour after the time of sale, the transfer may be made into the name of the buyer; and in cases where a name is guaranteed the rule shall apply as if the stock or shares had been actually sold out.

99. Registered shares or stock if not delivered within ten days may be bought in against the seller, at or after twelve o'clock on the eleventh day after the date of the ticket, and all loss incurred thereby shall be paid by him. The broker employed to buy in the shares is required to give one hour's public notice before proceeding to make such purchase, and if the purchase be not made or attempted within half an hour after the expiration of the time fixed, the notice shall be cancelled. Shares or stock thus bought in, and not delivered by one o'clock on the following day, may be repurchased for immediate delivery without further notice, and the loss (if any) shall be paid by the member causing such repurchase. If there be a profit on the transaction it shall be paid to the treasurer of the fund for decayed members.

100. A member who shall allow fifteen clear days from the date of the ticket to elapse without buying in, or attempting to buy in, registered shares or stock, shall release the seller from all loss caused by the failure of any member through whose default the shares or stock were not delivered, unless such right has been waived at the request or with the consent of the seller. The right to buy in shares or stock is limited to the original buyer, whether the name of the first buyer or that of any other member is placed on the ticket to pay; but in order to identify the original ticket, the name into which the stock or shares are to be transferred must be stated on the order given to the broker employed to buy in, to whom holders of overdue tickets may apply.

On the day previous to, and on the name day of, every settling day in securities deliverable by transfer, the clerk of the house shall, at twelve o'clock, fix the making-up prices for such securities at the actual market prices; and no making-up shall be binding, unless at such fixed prices.

101. On name days the clerk of the foreign market shall (with the concurrence, if necessary, of a member of the committee) fix the prices of shares at three o'clock (or on Saturdays at one o'clock), at which prices unsettled accounts shall be temporarily made up, and the differences paid in the usual way.

102. No person shall be required to pay for registered shares or stock presented after half-past two o'clock, or after one o'clock on Saturdays.

Rules applicable to Securities deliverable to Bearer.

103. All bargains in foreign stocks or scrip shares when no time is specified shall be considered as made for the existing account.

When new shares are awarded to the holders of old ones, how the parties are to proceed.

Time limited wherein the committee will entertain disputed claims for new shares.

Committee will fix a nominal price of the new shares, pending their issue.

Liability of parties taking antedated or undated tickets.

Shares for which names not passed must be sold out within two days.

The purchaser of shares, or stock sold out, must give a name within half an hour; and those who guarantee a name must also give it within half an hour.

Shares not delivered within ten days may be bought in.

If shares which have not been delivered are not bought in within fifteen days, the seller is released from liability.

Price of shares to be taken at three o'clock on name days, at which all open accounts to be made up.

Time for requiring payment for shares or stock.

Bargains where no time is fixed.

Limit as to the time of dealing for future accounts.

American bonds and shares, what amount deliverable.

Securities not paid for in time may be sold out.

Payment for foreign stock or scrip shares cannot be required after three o'clock.

Time when foreign stock or scrip shares must be delivered.

Securities subject to periodical drawing by lottery or otherwise.

A member allowing three days to elapse without buying in scrip shares or bonds, loses his claim against original seller.

When making up prices are to be fixed.

Prices to be taken at three o'clock on settling days, at which all open accounts shall be made up.

Foreign coupons when returnable, &c.

Bonds, if torn or damaged, to be returned within three days.

Railway bonds.

104. The committee will not take cognizance of any bargain in foreign stock or scrip shares effected for a period beyond the end of the ensuing two accounts.

106. No member shall be required to accept the delivery of a certificate of American shares of a larger amount than ten shares of 100 dollars each nominal capital, or twenty shares of 50 dollars each, nor an American bond of a larger amount than 1,000 dollars, except upon special contract.

107. The seller of foreign stock or scrip shares for a particular day, which the buyer is not prepared to pay for by half-past two o'clock on that day (or half-past twelve on Saturdays), may sell out the same and claim of the original buyer any loss incurred.

108. A member shall be required to pay for foreign stock or scrip shares presented up to half-past two o'clock on account days, or until three o'clock on any other day except on Saturdays, when he shall not be required to pay for the same after one o'clock.

109. Foreign stock or scrip shares bought for any period, except the account day, which shall not be delivered before half-past two o'clock (or half-past twelve on Saturdays), may be bought in on the same or any subsequent day, and any loss occasioned by such repurchase shall be borne by the seller.

But foreign stock or scrip shares, bought for the account day and not delivered before half-past two, may be bought in on the following day at half-past twelve, in which case the loss shall be borne by the person who shall not have delivered the stock or shares at half-past two o'clock on the settling day.

A member neglecting to take the numbers of bonds or shares not delivered in due course shall be required to trace out the responsible party.

110. The buyer of shares, bonds, obligations or other securities subject to periodical drawing by lottery or otherwise shall not be entitled to claim delivery of the same, previous to the day for which contract has been made. All such securities shall be taken and delivered as undrawn; and if after delivery any shall be found to have been drawn on or before the day of such delivery, the same shall be returned for the purpose of being exchanged for undrawn securities.

111. A member who shall allow three days to elapse without availing himself of his right of buying in, or without attempting to buy in scrip shares or bonds, releases the seller from any loss arising from the failure of any party through whose default the shares or bonds were not delivered, unless such right has been waived at the request or with the consent of the seller. The right to buy in shares or bonds is limited to the original buyer.

112. The clerk of the foreign market shall, at twelve o'clock on each of the two days preceding each foreign settling, fix the making-up prices of all foreign stocks and scrip shares, by taking the then actual market prices; and no making-up shall be binding unless at such fixed prices.

113. On every settling day, at three o'clock, the clerk of the foreign market shall (with the concurrence, if necessary, of a member of the committee) fix the prices of foreign stock and scrip shares, at which prices all undelivered stock shall be temporarily made up, and the differences paid in the usual manner.

Buyers of foreign stock or scrip shares shall pay for such portions as may be delivered before half-past two o'clock.

116. Foreign coupons sold at the fair exchange of the day, and not paid, are returnable with all reasonable expenses.

The secretary of the share and loan department shall, as interest or dividends become payable on foreign railway shares, fix a price for the coupons in sterling money, which price, when posted in the Stock Exchange, shall be adopted by the market.

117. Every bond or scrip share is to be considered perfect, unless it be much torn or damaged, or a material part of the wording be obliterated, and any dispute arising shall be left to arbitration. The committee will not take cognizance of any complaint in respect of bonds or shares alleged to have been delivered, deficient in, or with irregular coupons, should such bonds or shares be detained by the buyer more than three days after the delivery, unless it can be proved that the party passing them was aware of their being imperfect.

118. Bonds and debentures of railways in Great Britain, Ireland, and the East Indies, shall be dealt in so that the accrued interest, up to the day for which the bargain was done, be paid by the buyer; but bargains in bonds and debentures of colonial and foreign railways shall include the accrued interest in the price.

Settling Days and Quotation in the Official List of new Loans, Shares and Stocks.

120. The committee will appoint a settling day for transactions in shares of a new company, if no allegation of fraud or misrepresentation be substantiated, and provided sufficient scrip or shares be ready for delivery; but such settlement shall be special, and shall not apply to bargains made previously to complete delivery of the allotment letters; and no differences arising out of such bargains shall (under any circumstances) be allowed as claims against a defaulter's estate, nor shall any buying in or selling out for the settlement of such bargains be sanctioned or permitted.

Settling day, and quotation of companies.

The application for a settling day must, in the first instance, be laid before the secretary of the loan and share department, who shall give two clear days' notice to the Stock Exchange previously to its being submitted to the committee.

The committee will also order the quotation of such company in the official list upon the following conditions:—

That the company is of a *bonâ fide* character and of sufficient magnitude and importance.

That not less than two-thirds of the shares have been applied for by and allotted unconditionally to the public, and the deposit paid thereon (*h*); that in the event of the directors of a company having allotted, or it being their intention to allot, a portion of the shares without power to individual allottees of dealing with them at their discretion, the same shall be stated in the prospectus, with the number and amounts of the shares; (it being expressly understood that shares reserved for future issue, or granted to projectors, *concessionnaires*, or owners of property, in lieu of money payments, will not be considered as forming any portion of the two-thirds subscribed); and that shares to be granted to contractors for works to be executed must be specially so described, and will in no case be admitted by the committee as representing part of the subscribed capital if exceeding one fifth of the whole capital.

The application for a quotation must be accompanied by the following documents:—

The prospectus, with any evidence that may be required as to its correctness, and that the company, if a foreign one, is formed according to the laws of the country in which it originated.

An official certificate from the company, stating the number of shares applied for and allotted, the amount of deposits paid thereon, and the number of shares (if any) to be taken by contractors.

A certificate from the bankers of the company (accompanied by the pass-book), stating the amount of deposits received, and a complete list of the applications and allotments.

The secretary, in announcing to the Stock Exchange the settling day for the shares of a new company, shall state whether the company is "to be marked" or "not to be marked" in the official list.

121. Documents relating to the settlement or quotation of stocks or shares must be delivered to the secretary one clear day before the meeting of the committee, and the brokers (if any) of the contractor, agent or company shall give the committee such information as may be deemed necessary.

Brokers to attend when settling or quotation applied for.

122. The committee will not recognize transactions in the shares of a new company unless one-half of the nominal capital of the company be issued, and at least ten per cent. paid thereon.

New companies must have 10 per cent. paid on half nominal capital.

123. A company issuing, or promising to issue, new shares within twelve months after the first settling day appointed by the committee, unless under special circumstances, shall be liable to exclusion from the official list.

Companies issuing new shares within a year of first settlement not to be quoted.

124. Foreign railway or other industrial companies partly subscribed for and allotted in this country, shall not, unless under special circumstances, be allowed a quotation in the official list in the Stock Exchange until they have been officially quoted in the country to which they belong, or are marked on the Paris Bourse.

Quotation of foreign companies.

(*h*) Where the defendant and others forming the board of management of a company, for the purpose of getting the shares of the company inserted in the official list of the Stock Exchange, untruly represented, through their secretary, that two-thirds of the scrip had been paid upon and the shares were in consequence inserted in the official list, and the plaintiff, knowing

this rule of the Stock Exchange, purchased shares on the faith that two-thirds of the scrip had been paid upon, and the jury found that the representation was fraudulently made, it was held that the defendants were liable to the damages sustained by the plaintiff, although the representation was not made to him directly. *Bedford v. Bagshaw*, 29 L. J., Exch. 59.

Caution to
brokers bringing
out companies.

125. The committee particularly caution brokers against giving the sanction of their names to the bringing out of any company without due inquiry as to the *bona fides* of its objects and the character of the promoters, directors, concessionnaires and other parties connected with it. Members disregarding this caution are liable to be dealt with in such manner as the nature of the case may demand.

Companies under
the Limited
Liability Act.

127. In settlements of shares of companies under the Limited Liability Act, when the allottees have signed articles of association, the delivery of shares must be by deed of transfer, and in cases where no such articles have been signed, and scrip certificates only have been issued, the committee will not fix a settling day, unless the scrip bear a stamp of one penny, and a limited period be stipulated in the scrip certificates for their registration.

Settling days in
English and
foreign stock,
shares, &c.

128. The committee shall fix the settling day for English stock at least eight days previous to the settlement of the pending account; and those for foreign stock, shares, &c., for the succeeding month, at the first meeting of the committee in each month, of which the secretary shall give the usual notice.

III. Borrowed Capital.—1. Mortgages and Bonds.

Mortgages and
bonds.

The company may, subject to the restrictions in the special act, and by order of a general meeting, borrow money on mortgage (*i*) or bond (*k*), and may mortgage the undertaking and the future calls on the shareholders: (8 & 9 Vict. c. 16, s. 38, App. 29.) If any mortgage or bond be paid off, it may be re-borrowed: (Sect. 39.) If, by the special act, money cannot be borrowed until a definite portion of capital is subscribed, or if the authority of a general meeting is necessary, the certificate of a justice is sufficient evidence of the first, and a signed copy of the order of a general meeting is sufficient evidence of the second, fact: (Sect. 40.) Mortgages and bonds must be by deed duly stamped, wherein the consideration must be truly stated (*l*), and forms are given in the act (*m*): (Sect. 41.) Holders of mortgages or bonds issued under the act are not entitled to any preference by reason of the priority of their mortgages or bonds, or of the meeting at which they were authorized. For by sect. 42, it is enacted, that:—

Rights of mort-
gagees.

“The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums and premises, comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any

(*i*) Whether such mortgages and bonds or debentures are within the Statute of Mortmain, see *Myers v. Perigal*, 22 L. J. (Ch.) 431; S. C., 21 L. J. (C. P.) 217; 11 C. B. 90; 2 Gex, M. & Gord. 599; *Ash-ton v. Lord Langdale*, 20 L. J. (Ch.) 234; 15 Jur. 868. In *Langham's Trust*, Weekly Rep. 1852-3, p. 301, Wood, V.C., held that a mortgage of the tolls of a canal was within the statute.

(*k*) Where a bill was filed against the directors of a railway company, which had power to borrow monies not exceeding 45,000*l*. “on mortgage or bond” so soon as the whole capital had been subscribed and half paid up, alleging that monies had

been illegally borrowed, and praying for a declaration that borrowing was illegal, and for an injunction to restrain the directors from repaying such sums out of the assets of the company; a demurrer was allowed on the ground that there was no allegation that half the money subscribed had not been paid up, nor that the defendants intended to issue bond or mortgages before it was due. *Nowell v. Andover and Redbridge R. Co.*, 3 Giff. 112.

(*l*) See *White v. Carmarthen and Cardigan R. Co.*, 33 L. J. (Ch.) 93, 96; 1 Hemm. & M. 786.

(*m*) See the form, post, App. 44, 45.

preference one above another, by reason of priority of the date of any such mortgage or of the meeting at which the same was authorized." Mortgages and bonds.

And by sect. 44 :—

"That the respective obligees in such bonds shall, proportionally according to the amount of the monies secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned, and thereby intended to be secured, without any preference one above another, by reason of priority of date of any such bond, or of the meeting at which the same was authorized, or otherwise howsoever." Rights of obligees.

Although future calls on shares are mortgaged, the company may, nevertheless, receive and apply such calls: (Sect. 43.) A register of mortgages and bonds must be kept by the secretary; and all shareholders, mortgagees, and bond creditors may, at all reasonable times, peruse the same: (Sect. 45.) Mortgages and bond debts may be transferred by deed, and a form is given in the act (*m*) (sect. 46); and the transfer must be registered with the secretary, otherwise the company are not responsible to the transferee (*n*): (Sect. 47.) The interest on mortgages and bonds must be paid in preference to any dividends payable to the shareholders (sect. 48); the interest on any mortgage or bond is not transferable, except by deed duly stamped: (Sect. 49.)

The company may fix a time in the mortgage or bond for the repayment of the money, and at the period so fixed it becomes payable (*o*): (Sect. 50.) If no time be fixed, either party may give the other six months' notice, provided twelve months have elapsed from the date of the instrument. The mode of giving notice is prescribed in the act: (Sect. 51.) After the expiration of six months' notice, given by the company, all further interest ceases to be payable: (Sect. 52.) The following clause relates to the appointment of a receiver (*p*):—

(*m*) Post, App. 45. The transferee must sue the company in his own name, *Vertue v. East Anglian R. Co.*, 5 Exch. 280; 19 L. J. (Exch.) 235. When a transfer, made for a special purpose, does not give title to a third party, see *Norman v. Reid*, 10 Ir. Law R. 207. By 16 & 17 Vict. c. 59, s. 14, to facilitate the transfer of bonds and mortgages given by public companies under Acts of Parliament, it is enacted, that "where on the original making and issuing of any such bond or mortgage as aforesaid, and before any transfer or assignment thereof, the same shall be stamped with an amount of stamp duty equal to three times the amount of the ad valorem stamp duty chargeable thereon by law, and over and above the said ad valorem duty, then every transfer or assignment thereafter made of such bond or mortgage by endorsement thereon, shall be deemed to be exempt from the stamp duty which would otherwise be payable in respect of such transfer

or assignment. Provided always, that nothing herein contained shall extend to exempt any such transfer or assignment from any stamp duty to which it may be liable as a settlement of the money or stock secured by such bond or mortgage or any portion thereof." And see a similar provision as to transfers of mortgages and bonds granted by railway companies in Scotland, 24 & 25 Vict. c. 50.

(*n*) See *Doe v. Jones*, 5 Exch. 16. Whether this applies to transfers by act of law, as in cases of bankruptcy, see *Lane v. Smith*, 14 Beav. 49.

(*o*) If the principal be not tendered by the company on the day appointed for payment, interest until the day of payment is recoverable. *Price v. Great Western R. Co.*, 16 M. & W. 244; 16 L. J. (Exch.) 87.

(*p*) In some special acts, bond creditors, as well as mortgagees, are authorized to apply for a receiver; and in considering cases which arise on this subject, it is im-

Mortgages and bonds.

Appointment of a receiver.

"Sect. 53. Where by the special act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear, in any of the superior courts of law or equity, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum alone, or, if his debt does not amount to the prescribed sum, he may, in conjunction with other mortgagees whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided."

An application for a receiver must be made to two justices, who, by order, may appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment, until the principal or interest due has been recovered: (Sect. 54.) The books of account of the company are at all times open to mortgagees and bond creditors: (Sect. 55.) (q)

Remedies of specialty creditors.

Ejectment will not lie.

Having thus briefly stated the contents of the clauses in the Consolidation Act which relate to mortgages and bonds or debentures, we proceed to direct attention to some questions of great importance, which have been discussed in the courts, relative to the rights and remedies which are available to the creditors of railway companies. The subject embraces the rights of simple contract creditors who may obtain judgments against the company, as well as of specialty creditors—for, as we shall see presently, these two classes of creditors may be brought into collision. And, first, it was decided, on the construction of statutes containing nearly similar provisions to those in 8 & 9 Vict. c. 16, that the lands on which a railway is made do not pass by a mortgage of the undertaking, and the rates, tolls and other sums arising under the said acts, and that a mortgagee was not entitled to maintain ejectment; the Court saying that there was no reason to suppose that the Legislature intended so inconvenient a thing to the public and the company, as obliging the company to part with that property by which their undertaking was carried on (r).

portant to consider how far the clauses in the special acts override or control the provisions of the Consolidation Act. It is often extremely difficult to construe an act, so made up from different parts of other acts, partly repealed and partly not, and it has been necessary, on this account, to state the decided cases hereinafter mentioned at some length.

(q) The provisions of the Companies Clauses Act, 1863, with respect to additional capital and debenture stock are noticed, post, 148.

(r) *Doe d. Myatt v. St. Helen's R. Co.*, 2

Q. B. 364; *S. C.*, 2 Railw. C. 756. But see and consider the interpretation clause in 8 & 9 Vict. c. 16, s. 2, and *Legg v. Matthieson*, 29 L. J. (Ch.) 385; 2 Giff. 71. As to mortgages given by the trustees of a turnpike, see *Fairtitle v. Gilbert*, 2 T. R. 169; *Doe v. Booth*, 2 B. & P. 219; *Doe d. Thompson v. Lediard*, 4 B. & Ad. 137; *Doe d. Watton v. Penfold*, 3 Q. B. 757; *Doe d. Levy v. Horne*, *ibid.* 757; *Pardoe v. Price*, 11 M. & W. 427; 13 M. & W. 267; 16 M. & W. 451; *Lord Crewe v. Edleston*, 1 De G. & J. 93.

Again it has been decided that an action at law cannot be maintained against the company on the mortgage-deed, unless the deed contains words which amount to a covenant to pay the money. This was decided in *Pontet v. Basingstoke Canal Co. (s)*, where Tindal, C. J., says,—

When an action at law may be maintained.

“These acts of Parliament are public acts, and they enable the company to raise the money upon the credit of the undertaking, and the rates or duties granted; and it is distinctly said that the creditors shall be creditors on the rates or duties, in equal degree one with another. This is not, therefore, a security which gives the plaintiff any right of action in a court of common law. It would be most destructive to the parties engaged if they were held to be so liable.”

With respect to bond creditors, however, it is to be observed that, by the form of the bond (*t*), the railway company bind themselves under the common seal, to pay the obligee a certain sum of money on a day named, and in such cases an action of covenant will lie on the bond (*u*). So if a mortgage deed stipulates that the money shall be repaid on a certain day, this amounts to a covenant that the sum shall be repaid on that day, and in such cases an action may be maintained at law to recover the money. This was decided in *Hart v. Eastern Union R. Co.*, first by the Court of Exchequer (*x*), and afterwards affirmed on writ of error in the Exchequer Chamber (*y*). The case turned in part upon the construction of certain clauses in the special acts, which had reference to the powers given to specialty creditors to apply for the appointment of a receiver; and as the remarks made by the Court illustrate the operation of some similar clauses in the Consolidation Act above set forth, we transcribe a portion of this important judgment.

Hart v. Eastern Union R. Co.

It appeared that the special act authorized the mortgagees or bond creditors to require the appointment of a receiver; and, on behalf of the company, it was not denied that the instrument itself, on its face, imported a covenant by the company for the repayment of the money advanced upon a day therein named for the purpose, and that, apart from such consideration, the action would be maintainable; but it was contended, in the first place, that the company, unless enabled by specific statutory provisions, could not bind themselves by any such covenant, so as to give a right of action; and, secondly, that not only were there no such enabling clauses in the statutes relied on by the plaintiffs, but that these statutes gave other specific remedies for the recovery of the money advanced, to which alone recourse

(*s*) 3 Bing. N. C. 433; 3 Hodges, 46.
See also *Pardoe v. Price*, 11 M. & W. 427;
Same v. Same, 13 M. & W. 267; *R. v. Trustees of Balby Roads*, 22 L. J. (Q. B.) 164; Bail C. C. 134.
(*t*) Post, App. 45.

(*u*) *Price v. Great Western R. Co.*, 16 M. & W. 244. When a bond creditor may examine the books of the company, see ante, 82, note (*h*).

(*x*) 7 Exch. 246.

(*y*) 22 L. J. (Exch.) 20; 8 Exch. 116.

*Hart v. Eastern
Union R. Co.*

could be had. But the Court of Exchequer decided that the action would lie, and the judgment was affirmed in error in the following language:—

Judgment in the
Exchequer
Chamber.

“We are clearly of opinion, that where a corporation is created for certain purposes, with power to sue and be sued, to borrow money for the completion of those purposes, and to secure the repayment of such money by an instrument which, on its face, imports a covenant for repayment, if money be so borrowed and so secured, an action may be maintained against the corporation on a breach of the covenant. This appears to us a necessary inference from the premises just stated: and as all these premises concur in the present case, without a more specific examination of the sections of the various statutes, this is enough to dispose of the first point made by the plaintiffs in error. The second point will require a more detailed examination of the several statutes. By the mortgage, it appears that the money was borrowed under the powers of 10 & 11 Vict. c. ccxxv.; and money borrowed under that act is, by the 7th section, borrowed under the same or the like provisions as are contained in 8 & 9 Vict. c. xciv. This act, in section 6, enables the company to borrow on mortgage or bond, and, for securing the repayment of the money lent on mortgage or bond, to mortgage the undertaking as authorized by 7 & 8 Vict. c. lxxxv. To this act, therefore, we must look; and though by 10 & 11 Vict. c. clxxiv. it is, for general purposes, repealed, yet, for the purposes of our present inquiry, it is in full force. The 37th section of this act gives power to borrow and secure repayment by mortgage of the railway and future calls. The 49th section enables the company to fix the period for the repayment of the principal and interest, and in such case they are to cause a period to be inserted in the mortgage deed as they have done here; on the expiration of which period it is enacted that the principal and the arrears of interest shall be paid to the party entitled to the mortgage. It being undisputed that the money in question was borrowed under such circumstances in all respects as satisfied the conditions imposed by the Legislature, and that the instrument of security is in the form prescribed, it is clear, if the statute had stopped here, an action might have been maintainable; and this is very important in determining the construction of the sections to which we are now coming, and on which has arisen whatever difficulty has been felt by any member of the Court in the decision of this case. The plaintiffs in error contend that these, and these alone, *give* any right of action, and upon a condition not complied with. The defendants in error maintained that they *give* no right of action, but only *recognize* the pre-existing right, and add thereto another specific remedy, at the option of the borrower. These sections, 51 and 52, which may be read as one, commence with this preamble, ‘in order to provide for the recovery of the arrears of interest and costs, or of the principal and interest and costs of any such mortgage or bond at the respective times at which such principal and interest and costs become due.’ And the 52nd section, as to principal and interest and costs, enacts ‘that if the same be not paid within six months after the same has become payable, and after demand thereof in writing, the mortgagee or bond creditor may sue for the same in any of the superior courts of law or equity, or, if his debt amount to the sum of 5,000*l.*, he may alone, or if his debt does not amount to 5,000*l.*, he may, in conjunction with other mortgagees or bond creditors, whose debts being so in arrear after demand as aforesaid, shall, together with his, amount to 10,000*l.*, require the appointment of a receiver,’ &c. The 51st section had previously provided, that if the interest shall remain unpaid for thirty days after it shall have become due, and demand thereof shall be made in writing, the mortgagee or bond creditor may either sue in an action of debt, or may require the appointment of a receiver. Now as to both

principal and interest, the 49th section, as we have just seen, provided that they should be paid at the expiration of the period named in the instrument of security. If, then, we hold the expiration of six months in one case, and thirty days in the other, after such period, are conditions precedent to any right to recover by action, either we make the sections inconsistent, or we must suppose a mere right has been declared by the former section, that is, a right to repayment on a day named for the purpose by the debtor, but no remedy to enforce it given until the thirty days, or six months later, with a superadded condition of a demand in writing. This, in itself, would be unreasonable; and the more so, because these terms certainly do not apply to the company, which is left at liberty to pay at a day named, at all events; a liberty which, considering how often such loans are made by way of investment, and how the value of money fluctuates in short periods of time, will, in many supposable cases, operate very inconveniently to the lender. Moreover, if we give this construction to the 49th section, we must do the same to the 50th, which provides for cases where no time has been fixed in the mortgage deed or bond, for the repayment of the money, and enacts that the lender may, at the expiration or at any time after the expiration of twelve months from the date of the mortgage or bond, demand payment of the principal with all arrears of interest on giving six months' previous notice for that purpose. It would be strange to hold, that when by six months' notice the money under this section had become payable at the end of twelve months, still that no action could be maintained till after six months' further default and demand in writing; yet this must be the consequence if we hold the right of action is given by the 51st and 52nd sections only. But this construction, which involves such difficulty, is not a necessary one. All the enacting words of both would receive a full and satisfactory meaning, if we suppose them to provide only and specifically for the case of default for thirty days or six months respectively after demand made in writing, and in either of those specified cases to enact that the company would be subject not only to an action, but at the option of the lender to have a receiver put upon them,—an arrangement which, whether advantageous or not to the lender, could not but be highly inconvenient to them. We agree with the Court below in thinking that this is the true construction of the sections, and it has the advantage of making them agree with the corresponding sections of the Companies Clauses Act, 8 & 9 Vict. c. 16, ss. 50, 51, 52, and 53, which provide for the repayment of the money borrowed and interest where a time has been fixed, and where no time has been fixed in the instrument; and the last of which expressly gives a right to require the appointment of a receiver after thirty days or six months' default, as the case may be, and after demand in writing, without prejudice to the right to sue."

Hart v. Eastern Union R. Co.

Judgment in the Exchequer Chamber.

In a subsequent case, where an action at law was brought on a bond given by a pier company, and the condition annexed to the bond contained a reference to the provisions in the special act, to the effect that all the owners of such securities should be equally entitled to a claim or lien on the rents, rates, tolls and profits of the company, without any preference or priority, it was contended that an action was not the proper remedy for enforcing the claim of the obligee, for if he recovered in the action he might issue an *elegit*, and then seize the lands of the company; but the Court of Queen's Bench held, on the authority of *Eastern Union R. Co. v. Hart*, that an action would

Bolckow v. Herne Bay Pier Co.

lie on the bond (*z*). But the learned judges all intimated that the effect of the statute might be such, as to restrain the plaintiff from issuing any execution, at least by *elegit* (*a*).

Rights of mortgagee paramount to those of judgment creditor.

Where it is clear from the language used in a mortgage that the land on which the railway is made is included (*b*), then it is clear that the rights of a judgment creditor are subordinate to those of the mortgagee, as the judgment creditor can only take the interest of his judgment debtor, and that interest is an equity of redemption only. He therefore takes subject to the mortgages (*c*).

And so where the mortgage is of rates and tolls, it would seem to be equally clear that the rights of a judgment creditor are subordinate to those of a mortgagee. But there is this difference in the case of a mortgage of rates and tolls, that rates and tolls being incorporeal hereditaments, it is necessary for a mortgagee to enter, in order to prevent the mortgagor or judgment debtor from receiving them, and consequently a judgment creditor might, if the mortgagee were not in possession, take rates and tolls in execution, by virtue of the attachment clauses in the Common Law Procedure Act, 1854; but as soon as a mortgagee thinks fit to take possession, the judgment creditor would be dispossessed, and could not take subsequent tolls (*d*).

In a suit in equity all the specialty creditors must be parties.

When mortgagees or bond creditors are driven to equity for relief, it appears to be a rule that all the specialty creditors must be made parties to the suit.

Thus, in *Mellish v. Brooks* (*e*), where a bill had been filed by a mortgagee of turnpike tolls, praying that a receiver might be appointed, to enable the plaintiff to recover his mortgage debt and interest, Lord Langdale, M.R., observes—

“As to the form of the suit, it is to be observed, that the tolls which are collected under the acts are the security to which the plaintiff and all other persons who have lent the money on the credit of the acts are entitled; that the plaintiff is one of several, and is entitled to the benefit of only a share of the tolls, namely, a share bearing such proportion to the whole, as the amount due to him bears to the aggregate amount of all the other sums borrowed on the credit of the tolls; and the question is, whether the plaintiff, in the absence of the other mortgagees, can sue alone for his share. He asks to be paid what is due to him out of the monies received or to be received under the acts of Parliament, and that a receiver of the same may be appointed; but the other mortgagees are interested in those monies, and the plaintiff

(*z*) *Bolckow v. Herne Bay Pier Co.*, 1 E. & B. 74.

(*a*) On this point, see *Perkins v. Pritchard*, 13 Sim. 277; 3 Railw. C. 95; *Hill v. Manchester Waterworks Co.*, 2 B. & Ad. 544; *Kennett v. Westminster Improvement Commissioners*, 11 Exch. 349.

(*b*) This is not always clear, ante, p. 128, n. (*r*).

(*c*) *Potts v. Warwick and Birmingham Canal Navigation Co.*, Kay, 142; *Ames v. Trustees of Birkenhead Docks*, 20 Beav. 332.

See also *Lord Crewe v. Edleston*, 1 De G. & J. 93; *Legg v. Mathieson*, 29 L. J. (Ch.) 385; 2 Giff. 71. In *Furness v. Caterham R. Co.*, 25 Beav. 614; 27 L. J. (Ch.) 771, a judgment creditor was held entitled to a charge on the tolls and was appointed receiver, but a sale of the lands was refused.

(*d*) *Ames v. Trustees of Birkenhead Docks*, 20 Beav. 342.

(*e*) 3 Beav. 22. See also *Doe d. Banks v. Booth*, 2 B. & P. 219.

cannot be paid in full without diminishing the fund out of which they are entitled to be paid; and, under these circumstances, I am of opinion, that, in this form of suit, the plaintiff is not entitled to the general relief which he prays" (f).

The same rule was held to be applicable in a suit instituted for the purpose of cancelling certain debentures, alleged to have been improperly issued by an incorporated company (g). But it seems to be a sufficient compliance with this rule for a mortgagee to file his bill on behalf of himself and all other mortgagees (h). And as on the one hand a plaintiff who has a right to complain of an act done to a numerous society, of which he is a member, is entitled effectually to sue on behalf of himself and all others similarly interested, though no other may wish to sue; so although there are a hundred who wish to institute a suit, and are entitled to sue, still if they sue by a plaintiff who has personally precluded himself from suing, that suit cannot proceed (i).

We have thus seen that actions at law may be maintained against railway companies, to recover monies secured by bonds or mortgages; and also that, in cases where the special act authorizes such a proceeding, the bond creditors and mortgagees may recover their debts, by applying to two justices to appoint a receiver, under the 54th section of the Consolidation Act; or the Court of Chancery may, if a proper case is established, appoint a receiver. If a receiver be appointed, it is obvious that questions of a very complicated nature may arise between judgment creditors and the receiver, after that officer is placed in possession of the company's effects.

In *Russell v. East Anglian R. Co.* (h), Lord Truro, C., delivered a very valuable judgment on this important subject. In that case, the first question his Lordship was called upon to decide was,—whether it was competent for the sheriff to enter and make a levy, under a judgment obtained by a simple contract creditor, whilst a receiver appointed by the Court of Chancery was in possession of the company's effects. It appeared that a bill had been filed by a bond creditor of the company, on behalf of himself and a certain class of bond creditors, under the special act, against the company and certain other bond creditors and mortgagees of the company, praying pay-

On the duty of a receiver.

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(f) A mortgagee of tolls may recover more than six years' interest on his debt, the 42nd sect. 3 & 4 Will. 4, c. 27, not being applicable. See also ante, 102, n. (i); *Mellish v. Brooks*, 3 Beav. 22; *Hodges v. Croydon Canal Co.*, ibid. 86; *Price v. Great Western R. Co.*, 16 M. & W. 244; 4 Railw. C. 707.

(g) *Lord v. Copper Miners Co.*, 5 De Gex & Sm. 316.

(h) *Fripp v. Chard R. Co.*, 11 Hare, 241, 258. See *White v. Carmarthen and Cardigan*

R. Co., 33 L. J. (Ch.) 93.

(i) *Burt v. British Nation Life Assurance Association*, 4 De G. & J. 158.

(k) 3 Macn. & G. 125; 6 Railw. C. 501. See also *Fripp v. Chard R. Co.*, 11 Hare, 241; *Potts v. Warwick and Birmingham Canal Navigation Co.*, Kay, 142; *Ames v. Trustees of Birkenhead Docks*, 20 Beav. 332; *Furness v. Caterham R. Co.*, 25 Beav. 614; 27 L. J. (Ch.) 771; *Lord Crewe v. Edleston*, 1 De G. & J. 93; *Legg v. Mathieson*, 2 Giff. 71; 29 L. J. (Ch.) 385.

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ment of the debts of the plaintiff and of the other bond creditors and mortgagees out of the estate of the company, according to their respective priorities, and for a receiver. A receiver was thereupon, by the consent of the defendants, appointed, and the receiver gave notice to the sheriff of his appointment, and that he was in possession; but the sheriff, disregarding the notice, enforced a writ of *fieri facias*,—seized the goods of the company, and called upon the receiver to interplead at common law with the judgment creditor. A judge at chambers adjourned the interpleader summons, until a motion made to the Court of Chancery, to commit the sheriff for contempt, had been disposed of, and Sir K. Bruce, V.C., having refused to accede to this motion, the parties appealed to the Lord Chancellor, and it was then contended on behalf of the sheriff, that the original order for the appointment of a receiver was invalid, and that it was competent for the sheriff on that motion, to impugn the order appointing the receiver. But Lord Truro, C., said, on this point:—

Judgment of
Lord Truro, C.,
that the sheriff
could not levy
when the receiver
was in possession.

“The sheriff was wholly wrong in entering on the possession of the receiver, and he is not in a situation to make this defence. I have looked with care through the numerous authorities that have been cited. The result appears to be this, that it is an established rule of this Court, that it is not open to any party to question the orders of this Court, or any process issued under the authority of this Court, by disobedience. I know of no act which this Court may do, which may not be questioned in a proper form and on a proper application; but it is not competent for any one to interfere with the possession of a receiver, or to disobey an injunction, or any other order of the Court, on the ground that such orders were improvidently made. Parties must take a proper course to question their validity, but while they exist they must be obeyed. I consider the rule to be of such importance to the interests and safety of the public, and to the due administration of justice, that it ought on all occasions to be inflexibly maintained. In the present case it would have been perfectly open to the plaintiffs in the execution, to have applied to this Court to be heard *pro interesse suo*, or to have been heard on a summary application for leave to levy under their execution, notwithstanding the possession of the receiver. There is no instance in which justice may not be readily obtained, by persons who are supposed to have their rights interfered with by an order or process issued by this Court. Thus I find in one case (1), where a party wished to distrain for rent on property in the possession of a receiver, that the Court, being satisfied that the legal right of distress was paramount to the title of the party for whose benefit the receiver was appointed, allowed the distress to be made. I apprehend then it may be taken as a rule, that although this Court may have issued a process or have made an order which may interfere with the supposed rights and interests of other parties, not parties to the cause, it is always competent for such parties to make an application to the Court for relief, and it is not to be presumed or doubted but that justice will be duly administered to them, on that application. It seems to me, therefore, that the seizure in this case was made under circumstances that cannot be justified or excused; and I cannot account for those who acted on behalf of the

(1) *Gooch v. Haworth*, 3 Beav. 428; *Dixon v. Smith*, 1 Swans. 457, was also mentioned by Lord Truro.

sheriff, not being fully aware that if a receiver was in possession of the property, it was not competent to any person to disturb him; still less can I account for their attempting to call on the officer of this Court, to justify his proceedings in another Court. I therefore have no hesitation or difficulty in ordering that the sheriff and his officers do forthwith withdraw, and that they pay the costs of the application to the Court below: that will be without prejudice to any application that the sheriff or the plaintiffs in the execution may be advised hereafter to make."

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This preliminary question having been thus disposed of, the execution creditors, availing themselves of the permission afforded to them, afterwards presented their petition, praying in the alternative—that the receiver might be ordered to pay to them their debt out of the monies of the company in his hands, or that they might be at liberty to enforce their judgment against the company, and that the sheriff might be at liberty to execute the writs of *fieri facias*. The petition stated that in March, 1849, the company became indebted to the petitioners for coke supplied, and that an action was brought to recover the debt, and in December, 1849, the company consented to a judge's order, making the debt payable with interest in June, 1850; that after the judge's order was drawn up, the directors, at a meeting of the company, and in concurrence with the bondholders, mortgagees, and certain of the simple contract creditors, presented certain propositions for the adoption of their shareholders, which, if assented to by the whole of the creditors, would have relieved the company from all suits until 1857, but that these propositions, though assented to by a large body of the creditors, were repudiated by petitioners; that default was made in payment of the amount agreed to be paid pursuant to the judge's order, and that thereupon final judgment was, on the 2nd July, 1850, signed in the action, and on the 3rd July a writ of *fieri facias* issued upon the judgment, directed to the sheriff; that various communications had taken place between the company and the petitioners, but there had not been any intimation given to them that a receiver had been appointed, or that the suit had been instituted, until several days after the writ had been lodged with the sheriff. The petition then stated the filing of the bill for a receiver, on the 20th June, 1850, and that the relief thereby sought was exclusively for the benefit of the bond and mortgage creditors of the company, and that the rights of the simple contract creditors were in no way thereby sought to be provided for, nor could they obtain payment of their claims in the suit, and that the suit was instituted for the express purpose of preventing the petitioners from obtaining the benefit of the judge's order, and that the company and the defendants had arranged to consent to an application to be made by the plaintiff for a receiver; that, on the 25th June, 1850, an order was made appointing the receiver, and on the 29th June, 1850,

Subsequent application on behalf of the execution creditors.

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Arguments for the execution creditors.

For the specialty creditors.

No lien is created by the statutes in favour of specialty creditors.

he took possession of all the moveable and other goods, chattels, estate, property, and effects of the company, and was still in possession. The petition concluded by stating that the receiver held sums of money more than sufficient to pay the petitioner's debt, and that all the capital of the company was fully paid up.

Upon these facts it was contended by the petitioners that the statutes did not create any lien in favour of the bond creditors and mortgagees, which could interfere with the legal right of the judgment creditors, and further, that the receiver mentioned in the special act was a receiver to be appointed by justices, under sections 53 and 54 of the Companies Clauses Act, and not a receiver to be appointed by the Court of Chancery. On the other hand, it was contended on the part of the specialty creditors, that they must be regarded as statutory mortgagees, and that persons dealing with railway companies had full notice that payment of their demands on the company must be subject to all prior statutory liabilities: further, that the bonds were equivalent to legislative bills of sale, and that a specific lien was created on the property of the company; and that a receiver appointed under the Companies Clauses Consolidation Act was for the benefit of the party having him appointed, but the receiver appointed by the Court of Chancery was for the benefit of all parties. After this important case had been argued for several days, Lord Truro, C., said:—

“The question in contest between these parties turns upon the construction of certain clauses in two acts of Parliament, namely, the Companies Clauses Act (8 & 9 Vict. c. 16), and the special act under which the present company is established, the material sections being the 36th, 41st, 42nd, 43rd, 44th, 53rd, and 54th of the Companies Clauses Act, and the 32nd and 33rd sections of the special act. I have looked into all the authorities, but it will not be necessary, in order to explain the grounds of my judgment, that I should go through them. The petitioners complain that a receiver has been appointed in this suit by an arrangement between the parties to the cause; and the ground of their complaint is, that the effect of the arrangement was to surprise or mislead the Court, into making an order, for the express purpose of impeding the petitioners in their legal remedy: they insist that the plaintiff was not entitled to this order, and that the Court would not have made it, if the facts had been disclosed as they assert they ought to have been, and they, therefore, pray that they may be permitted to pursue their legal remedy, notwithstanding the existence of the order. The respondents, on the other hand, insist that the plaintiff was well entitled to the order, and that therefore there was no impropriety in the company giving their consent to that order being made; and they insist that they were well justified in expediting the proceedings for the purpose of intercepting the petitioner's execution for their own protection. Now the ground on which it is contended that the receiver was properly appointed is, that in this suit the plaintiff was a bond creditor of the company, and that the defendants appeared on behalf of themselves and the rest of the bondholders and mortgagees of the company. It is then insisted, that under the provisions of the act 8th Vict. c. 16, and the special act, the mortgagees and bond creditors acquired a specific equitable lien on the tolls, estate and effects of the company, and that the bill filed

in this case and the appointment of the receiver, were proper and accurate proceedings with a view of enforcing and rendering effectual that security. There are thus two questions to be decided—the first being whether, upon the construction of the statutes which I have mentioned, a specific equitable lien is given to the mortgagees and bond creditors of the company, upon the estate and effects generally of the company; and the second whether, if upon the construction of these acts, no such lien is given, will or not the absence of such lien entitle the petitioners to any and what order on the present application. The principal clause on which the first question depends is the 44th section of the Companies Clauses Consolidation Act, the point being, whether a specific lien on the general effects of the company is thereby given. It will be observed that that section does not specify any particulars on which the lien is to attach; it says, generally, that the parties are to be entitled to be paid out of the tolls, property or effects of the company. Now, of course, if the parties were to be paid at all, they must be paid out of the tolls, property or effects of the company, for those were the only sources which could enable the payment to be made; it is, therefore, in effect saying that the company are to pay out of their means. There must, I conceive, have been a reason for inserting this clause; and, first of all, as to the mortgage creditors. The mortgagees having had certain rights given to them by the 42nd section, and the bond creditors having also had certain rights given to them, this 44th section, which applies to bond creditors, might have been intended, as it appears to me, rather to limit than to extend their remedies, for it might be intended to show that the bond creditors were not entitled to all the remedies which had been previously given to the mortgagees. Such might have been one of the objects for the insertion of the clause; but it must be construed in connexion with the 36th section of the same act, and the two sections must be taken together. The 44th section says, ‘the respective obligees of the bonds shall be paid out of the tolls or other property or effects of the company;’ the 36th section, which has a sort of preamble to it, to the effect that it is intended to apply to the general creditors of the company. We have thus one clause, stating that the bondholders are to be paid out of the tolls or other property or effects of the company, and another clause which says that creditors shall have the remedy of levying an execution against the property or effects of the company. These two sections are to stand together, but can they stand together consistently with the 44th section, giving an equitable lien which was intended to protect the estate, property and effects of the company against other creditors? I do not apprehend that it can be said that the 36th section, which is entitled as applicable to the remedies of creditors generally, must not be extended to mean mortgagees and bond creditors. The act is framed on steps: first of all it begins by the 36th section as to the remedies of creditors generally, not at all referring or limiting its operations to any particular class of creditors: then having dealt with the creditors of the concern generally, and given them a right to levy execution upon the property or effects of the company, also without limitation, (and if the argument on the part of the plaintiff be correct, there could be no property and effects of the company which could be properly amenable to an execution,) it then comes to the mortgagees and bond creditors, and it gives specific remedies to each of these classes of creditors. The meaning and intention then of the 44th section, I apprehend, was to prevent any argument that the rights and remedies of the bond creditors therein referred to, as having certain particular remedies, were limited to those remedies, and the effect of it was to show that the bond creditors were at liberty to pursue their legal or equitable remedies, if they had any, against the property or effects of the company, in common with all the general creditors of the company, as well as being entitled to any particular remedies which might be given to them in terms. Now, although it may not be

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very safe to argue upon any particular intent with reference to these clauses, yet it is to be remarked that a remedy given to the general creditors against the property and effects of the company, is inconsistent with the whole property and effects being made subject to a specific equitable lien, on the part of any particular class of creditors. It is obvious also that these companies cannot be carried on without large credit being given, and if so, the Legislature could never have intended to exclude the general body of creditors from all remedy for their debts, by giving a specific lien, on the whole estate and effects of the company, to a particular class of creditors. It is, however, said, that although there may be difficulty in contending that while the property remains in possession of the company, and is being used for the purposes of the company, it may not be dealt with notwithstanding the lien, yet that effect may be given to the plaintiff's construction of the act, by allowing the bond creditors or the mortgage creditors at any particular moment to assert their right, and that their right may be inchoate or in suspense until they have asserted it: but what a fraud it would be upon the general creditors to allow the company to contract largely upon the possession and apparent ownership of property, and then to give to the mortgage or bond creditors the opportunity of asserting their lien, when probably the general creditors had allowed the company to obtain on credit the largest portion of their stock! Such a right is not consistent with the general administration of justice, and with the safety and convenience of a commercial concern, which this to a great extent is. It appears to me also, when I look at the remedies, that none of the remedies which the act specifically provides are, for the reasons I shall state, at all applicable to the case supposed. One remedy given is by a receiver, and it is most material to attend to the manner in which that receiver is provided for. First, it will be observed, that the receiver who is mentioned in the act, when obtained, is not to oust any other remedy at law or in equity which the mortgagees or bond creditors may have. They may proceed at law, and get execution; and that looks as if there were something which was intended to be seized, independently of what the receiver was to take, namely, the tolls and sums of money, &c. Now the execution could only be levied on the chattels, and thus the bond creditors and mortgage creditors have this great advantage over the general creditors, that they have a fund which the general creditors cannot take, namely, the tolls and sums of money, &c., and may take also in common with the general creditors by an action at law, if an action is maintainable, as to which I do not think it material to inquire (*m*). It does not, however, appear to me consistent with the fact of giving a receiver over the property for a particular purpose, that the property should be already subject to a lien on the part of the class of creditors to whom the several remedies are given. It is also material to advert to the 54th section of the Companies Clauses Consolidation Act, which shows how the receiver is to be appointed by the justices, and points out what he is to do on being so appointed. In the first place, all the tolls and sums of money 'shall be paid to and received by the person so to be appointed, and the money so to be received shall be so much money received by or to the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed, and after such interest and costs, or such principal, interest, and costs, shall have been so received, the power of such receiver shall cease.' But it is said that by the 33rd section of the special act, which I shall come to presently, there is another receiver pointed at. Were there then to be two receivers,—a chancery receiver and a justices' receiver? If there were, I certainly should have expected some regulation, some clause or section by which to

(*m*) On this point, see ante, 129.

work out so anomalous a provision, but there is none. When, however, this 33rd section is looked at in connexion with the 53rd and 54th sections of the Companies Clauses Consolidation Act, it will be seen that the only receiver which is contemplated is the justices' receiver. Now the claim set up of a specific equitable lien, is so extraordinary as connected with property of this nature, that it is most unreasonable to suppose that the right to it should be left to be inferred from a mere statement that payment was to be made out of the estate and effects of the company. It is not likely that the acts of Parliament by which these companies are constituted, and which are framed by the companies themselves, should be so prepared by them, as to give the bondholder a lien on every spade or barrow which the company may possess. It would be a stigma on a company, inviting subscribers and before any credit in fact existed, to insert a clause into their act depriving them of the power to contract on credit. It is material, however, to turn to what has been mainly relied upon, namely, the 32nd section of the special act. The 32nd section provides that the respective mortgagees and bond creditors shall be entitled to be paid out of 'the tolls and other estate and effects of the company.' The 44th section of the Companies Clauses Act says, that the obligees of the bonds shall 'be entitled to be paid out of the tolls or other property or effects of the company.' What difference is there between these two clauses? the one is merely a re-enactment of the other. The 32nd section associates the mortgagees and bond creditors together; and, as to its operative part, directs that they are to be paid out of the tolls and other estate and effects of the company. The only difference thus is, that the mortgagees are added, and the word 'estate' is substituted for the word 'property,' which is the term used in the 44th section of the Companies Clauses Act; and that is a difference which I do not think applicable to the present case. I think the effect is generally to declare that the rights of the mortgagees and bond creditors are not limited to the specific remedy of a receiver given to them in the Companies Clauses Act, but that they are also to stand as general creditors entitled to all those remedies against the estate and effects of the company, to which other creditors are entitled. It appears to me, therefore, that an effect is sought to be given to the 32nd clause, which is by no means justified. Then comes the question with regard to the 33rd section of the special act, which has relation to a receiver. It enacts that it shall be lawful for the mortgagees and bond creditors to enforce payment by the appointment of a receiver; but not one word is said as to his duties, how he is to be appointed, how he is to be discharged, how long interest is to be in arrear, or what notice is to be given. The reason for this is obvious, that all these matters were contained in the 53rd and 54th sections of the Companies Clauses Act, and the clause in question does nothing more than supply certain blanks in those sections. These three sections, then, are to be taken as one and the same enactment. Now the 33rd section of the special act does not say how long interest is to be in arrear, (could it be intended that if it was one day in arrear, the remedies would arise); but the 53rd section of the Companies Clauses Consolidation Act specifies thirty days. Then, again, the 33rd section of the special act does not say how long the principal is to be due before the remedy shall accrue; but the 53rd section of the Companies Clauses Act fixes the time at six months after the principal has become payable. So it is also to be observed, that in the 53rd section there is no sum mentioned for warranting an application for the receiver: the words there used are, 'if his debt amount to the prescribed sum,' referring to the special act, where the sum is to be filled up in each case; and the 33rd section of the special act here states it to be 25,000*l*. In short, taking any one of these sections abstractedly, it becomes quite useless. I therefore consider that the 33rd section of the special act does no more than give to the mortgagees and bond creditors the benefit of the 53rd and 54th sections of the Companies Clauses

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Act, filling up those blanks which are essential to give them effect. It thus seems to me that there is no ground for contending that this clause (the 33rd) carries the remedy against the estate and effects of the company any further than was done by the previous clause (the 32nd). Now this bill is filed upon the equity of a supposed specific lien, and in the course of the argument it has been substantially, and I think in terms, shown, that if there was no such lien, there was no foundation for the bill. It appears to me that it is quite inconsistent with the whole purview of the special act, to suppose any such specific lien was intended to be given, and that therefore this bill has no equity upon which the remedy sought could be founded, and that the order which was made ought not to have been made, and would not have been made, if, instead of being obtained by arrangement between the parties to the suit, the Court had been made aware of all the circumstances. The Court at the time was not aware that the receiver which was asked for was asked for with the view, or would have the effect, of interfering with the rights or remedies of other persons."

His lordship concluded by making an order that the sheriff should be permitted to levy, unless the amount of the debt and costs should be paid into the Court of Chancery, to abide the further order of the Court, so that the parties might appeal to the House of Lords, if they thought fit, and he added:—

"The parties will also have the opportunity of considering whether it is desirable to adopt the suggestion I submitted to them, of turning the questions raised into a special case. Supposing that to be done, my judgment may be entered upon the special case, to the following effect; that is to say, that the estate and effects of the company were liable to be taken in execution at the time; that the order for the receiver ought not to have been made; and that the execution creditors ought to be permitted to levy notwithstanding that order."

Mode of exer-
cising borrowing
powers.

We shall now turn to a few principles which have been laid down, as to the mode in which borrowing powers may be exercised.

If money is borrowed by companies in a manner unauthorized by their acts of incorporation, the securities have no legal validity⁽ⁿ⁾. In 1844 a Committee of the House of Commons reported that large sums of money had been illegally borrowed by railway companies, on loan or mortgage, and that it was expedient that the practice should be discontinued for the future, but that the then existing securities should be confirmed. In pursuance of this report, the stat. 7 & 8 Vict. c. 85, enacted, that, from and after the passing of that act [9th August, 1844], any railway company issuing any loan-note, or other negotiable or assignable instrument, purporting to bind the company

(n) See the preamble to sect. 19, 7 & 8 Vict. c. 85, post, App. 23. As to the doctrine of estoppel, in cases where parties set up as a defence that a statute has been contravened, see *Hill v. Manchester and Salford Waterworks Co.*, 2 B. & Ad. 544; *Doe d. Chandler v. Ford*, 3 A. & E. 649; *Doe d. Levy v. Horne*, 3 Q. B. 757; *Doe d. Watton v. Penfold*, *ibid.* 757. Where a dock company was authorized by the spe-

cial act to raise money on the security of the tolls and other property, and the mortgages were directed to be registered, and the company mortgaged to a contractor a quantity of tools, machinery and materials, used on the works, but the securities were not made in the form required by the act, or registered, it was held that the mortgage was valid. *McCormick v. Parry*, 21 L. J. (Exch.) 143; 7 Exch. 355.

as a legal security for money advanced to a railway company, otherwise than under the provisions of an act of Parliament, should, for such offence, forfeit a sum equal to the sum for which the loan-note, or other instrument, purported to be a security. But it provided, that any company might renew any loan-note, or other instrument, issued by them prior to the passing of that act, for any period not exceeding five years from the passing of the same act (*o*).

Loan notes.

And where any railway company, before the 12th July, 1844, had issued or contracted to issue any such loan-notes, or other unauthorized instruments, it is enacted that the company should pay off such loan-notes, or other instruments, as the same might fall due, subject as was thereinbefore provided; and until they should be so paid off, the loan-notes, or other instruments, should entitle the holders to the payment of the principal sum and interest (*p*). The secretary of every company is also required to keep a register of all such loan-notes, &c.; such register to be open to the inspection of certain interested parties (*q*).

The custom of Parliament to limit the amount of money which a railway company should be permitted to borrow, and to prescribe the conditions under which their borrowing powers should be exercised, has been recently and easily defeated by the issue of obligations (purporting to be for work done or materials supplied for the purposes of the undertaking), commonly called "Lloyd's Bonds." The holders of these bonds can sue upon them and recover judgment and issue execution against the companies, and are not hampered by the equality clauses contained in the ordinary mortgages and bonds (*r*). And there seems no reason to doubt the legal validity of Lloyd's Bonds *when bonâ fide given* to contractors or others for work actually done, as in fact they are nothing more than an acknowledgment under seal of a debt due for a *bonâ fide* consideration. But the power to issue them is, no doubt, liable to gross abuse, and the propriety and best mode of limiting such power has accordingly been the subject of grave consideration in Parliament, and will probably form the subject of legislation in the ensuing session. Last session the Select Committee of the House of Lords issued a report upon the subject, which, on 21st July, 1864, was ordered by the House of Commons to be printed (*s*).

Lloyd's Bonds.

In a case in which a company, having exhausted their borrowing powers under their act of Parliament, and being about to apply to

White v. Car-marthen and Cardigan R. Co.

(*o*) 7 & 8 Vict. c. 85, s. 19, App. 23.

(*p*) 7 & 8 Vict. c. 85, s. 20, App. 23.

(*q*) 7 & 8 Vict. c. 85, s. 21, App. 23.

As to the right of parties who lend money on loan notes to convert the same into shares, and when time is of the essence of such a contract, see *Campbell v. London and*

Brighton R. Co., 5 Hare, 519; 11 Jur. 651; *Pearson v. London and Croydon R. Co.*, 14 Sim. 541, post, 147.

(*r*) *Supra*, 126.

(*s*) This report is of so much importance that it is printed at length in the Appendix, post, at the end of the statutes.

Parliament for additional powers, issued bonds, payable at deferred periods, to contractors in anticipation of powers which they hoped to obtain, Wood, V.-C., held, that they had not done what was illegal or a fraud upon Parliament, although part of the bonds were issued for the purpose of raising money required to be deposited in pursuance of the Standing Orders on an application for a new bill (t).

*Chambers v.
Manchester and
Milford R. Co.*

But in another and subsequent case (u), where a company issued Lloyd's Bonds in order to discharge the liability of their chairman upon certain promissory notes signed by him to secure 10,000*l.* borrowed by the company to enable them to meet demands made, and to purchase part of the land required by them, it was held by the Court of Queen's Bench, in an action brought upon one of these bonds, that it was illegal, and that the plaintiff could not recover. The defendants were empowered by their special act to raise a capital of 550,000*l.*, and to raise by mortgage any further sum not exceeding 180,000*l.*, but no part of such further sum was to be raised until the whole of the capital had been subscribed for and one-half paid up. Part only of the capital was subscribed for; but the company determined to borrow 10,000*l.* for the purposes above mentioned. In giving judgment, Crompton, J., said,—

"I take the law to be exactly as it was laid down by Lord Wensleydale, in *South Yorkshire R. and River Dun Co. v. Great Northern R. Co.* (x), where he says, 'Generally speaking all corporations are bound by a covenant under the corporate seal properly affixed, which is the legal mode of expressing the will of the entire body, and are bound as much as an individual is by his own deed. Contracts with partnerships stand on a different footing. But corporations, which are creations of law, are, when the seal is properly affixed, bound just as individuals are by their own contract, and as much as all the members of a partnership would be by a contract in which all concurred.' That is undoubtedly true of corporations generally, and we shall see how he applies it to corporations created for special purposes. I entirely agree with what Mr. Lush says, that these railway companies are creatures of acts of Parliament, constituted for specific purposes, and we must look to see how far they are affected by provisions conferring upon them the powers of borrowing money, which they are said to have acted upon in the present case. Lord Wensleydale proceeds:—'But when a corporation is created by an act of Parliament for particular purposes, with special powers, then indeed another question arises, their deed, though under their corporate seal, and that regularly affixed, does not bind them if it appear by the express provisions of the statute creating the corporation, or by necessary or reasonable inference from its enactments, that the deed was *ultra vires*; that is, that the Legislature intended that such a deed should not be made.' That seems to me to touch the very question before us, and seems to show that if it appears from the act of Parliament, or by natural inference, that the deed is *ultra*

(t) *White v. Carmarthen and Cardigan R. Co.*, 33 L. J. (Ch.) 93; 1 Hemm. & M. 786.

(u) *Chambers v. Manchester and Milford R. Co.*, 33 L. J. (Q. B.) 268. In this case the illegality of the bond was not pleaded,

but there was a judge's order, that, under *non est factum*, the defendants might raise any legal or equitable defence.

(x) 9 Exch. 55.

vires, it is one which ought not to be made, and is invalid. The directors of these companies are in the position of special agents, and they have no power to affix the seal of the company to such deeds as are declared by the Legislature to be *ultra vires*, in such sense as having expressed that they are not to be made. I think that the corporation is bound by the seal being affixed to the deed where the directors have power given them so to affix it, but that it is not bound where the Legislature has said that the thing shall not be done. I cannot help agreeing with Mr. Lush, when he says that the Legislature intended that the company should have no borrowing powers except in the limited manner prescribed by their act of Parliament. Our attention has been called to 7 & 8 Vict. c. 85, s. 19"—[His Lordship read the section, and proceeded:]—"This implies that borrowing money in this way by these companies is unlawful, for the loan-note is not to be any security for the loan. Why should it not be such a security, except for the reason that the borrowing is illegal? The only doubt which can exist seems to arise upon the infliction of the penalty, and the act is so drawn that it might be argued that no penalty attaches unless the security is assignable; but I think that it means, if any loan-notes are issued the penalty attaches. The words of the act, as between borrower and lender, are strong to show that that is so, and that borrowing upon the security of loan-notes, or in any manner except such as is authorized by the act of Parliament, would be illegal. We come then to the special act in the present case, which gives power to the company to borrow 185,000*l.* on mortgage. Now, it is said that this does not touch the power of borrowing money on bond, or by simple contract; and that, by leaving out all mention of bonds, the Legislature has left to the company a larger power of borrowing money than it has given them of borrowing upon mortgage. Such a construction seems very strange. I agree with Mr. Lush, that the more natural construction is, that this is an enabling act, giving power to the company which it could not otherwise have possessed, and that the directors cannot borrow money in any other way. And this construction is recognized in 'The Companies Clauses Consolidation Act, 1845,' which, by sect. 38, enacts, that, 'if the company be authorized by the special act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special act, to borrow on mortgage or bond such sums of money, &c.,' which means that the special act was required to enable the company to borrow. The provision in this 8th section, when coupled with 7 & 8 Vict. c. 85, s. 19, impliedly prevents the company from borrowing money in any other way than by mortgage. If they could borrow on bond as they pleased, the provision empowering them to borrow on mortgage would be idle. There is, therefore, a special limited mode of borrowing, and the directors have no other powers. In *Payne v. Mayor of Brecon* (y) the difficulty did not arise, for there was no express power to borrow money for the particular purposes; and in *White v. Carmarthen and Cardigan R. Co.* (z), the bonds were given for a debt really due to the contractors, and which it might have been very proper to do, for companies may be unable at once to get the money required to pay the contractors, and then these bonds may be given to the contractors to enable them to raise money which is due from the company. It is the same as if the company say to the contractors, We are liable to you for work done, and we give you these bonds by way of payment for the work. In the case which was before the Master of the Rolls, *Troup's case* (a), there was no prohibition against paying in this way, and no illegality. Upon the facts of the present case, it appears that the bonds were sealed for the purpose of borrowing money upon them, in order that the plaintiff might be able to discharge the liabilities

*Chambers v.
Manchester and
Milford R. Co.*

(y) 27 L.J. (Exch.) 495; 3 H. & N. 572.

(z) *Supra*, 141.

(a) 29 Beav. 353; and see *Hoare's case*, 30 Beav. 225.

*Chambers v.
Manchester and
Milford R. Co.*

which were thrown upon him, and in substance it was the same as issuing a loan-note, and the whole transaction was tainted with illegality, for it was clearly prohibited by the act of Parliament."

Blackburn, J.—"I am of the same opinion. The principle was clearly laid down by Lord Wensleydale in the judgment already referred to. My opinion is based upon this, that the Legislature intended such a bond should not be made, and I think that the defendants have a good defence in law. If it was so only in equity, it would, perhaps, be necessary to take some more time to consider before delivering our judgment, but it is a defence in law. This is the case of a railway company created by a special act of Parliament, and subject to a series of general acts created for special purposes, and when I look at 7 & 8 Vict. c. 85, s. 19, together with 8 & 9 Vict. c. 16, s. 38, and section 8 of the special act, which are the principal sections upon which the question turns, I come to the conclusion that the Legislature meant that the company should not borrow money except in the way authorized by the special act. The whole scheme points to the fact of borrowing being prohibited. Such instruments as these are may be of use in this way, that when the company are actually indebted to a contractor it may be very convenient to make a bond pointing to a particular part of the debt, and it might very considerably facilitate the assignment in equity of the debt thus acknowledged to be due, and possibly it might throw upon the company the onus of proving that the debt did not exist. But if there be no actual debt such an instrument cannot create one, and the holder could not recover upon it, though he *bonâ fide* believed that there was a debt. When one reads the resolution, it is clear beyond all doubt that these bonds were given as a security for money lent, and that the original loan of 10,000*l.* was one to the company, and that the money was not raised by means of a mortgage. The plaintiff had become security for the money borrowed, and the bank had a right to come upon him when the note became due, but he could not recover it as money paid to the use of the company, for the company had not authorized it, and he only paid it to discharge the loan. The bonds were sealed in pursuance of the resolution of the 26th of May, to which the plaintiff was a party, and they were delivered to him in order that he might raise the money upon the security of them. There is nothing to support a legal claim for the money, and no action lies upon the bonds which were given as a security, and the rule must be made absolute to enter a nonsuit. My brother Shee requested me to say that, so far as he had heard the case, he had come to the same conclusion."

*Mortgages, &c.,
executed in blank
are invalid.*

A mortgage or bond, executed in blank, without the name of the obligee or mortgagee, is void, and parties whose names are subsequently inserted cannot recover at law against the parties who so executed the instrument (*b*). And where a company agreed to sell shares to a party on condition that as soon as they were paid up in full they would give debentures in exchange, provided they were in a condition legally to do so, the contract was held to be illegal, and a decree for specific performance was refused on the ground that the company were not, at the time of the contract, authorized to raise money by issuing debentures (*c*).

(*b*) *Hibblewhite v. M'Morine*, 6 M. & W. 214; *Enthoven v. Hoyle*, 21 L. J. (C. P.) 100; 13 C. B. 373. See however *Ex parte Swan*, 30 L. J. (C. P.) 113, and other cases, ante, 108.

(*c*) *West Cornwall R. Co. v. Mowatt*, 17

L. J. (Ch.) 366. But the Court of Queen's Bench held that the purchaser was liable to pay the calls on the shares, after his name was placed on the register. *West Cornwall R. Co. v. Mowatt*, 15 Q. B. 521; 19 L. J. (Q. B.) 478.

Where a company, authorized by an act of Parliament to raise money for certain purposes, gave a bond purporting to be for a sum borrowed and advanced conformably to the act, a plea that it was executed colourably, and that the money was not in fact borrowed or lent for the purposes of the statute, as the obligee well knew, was held bad, no fraud or injury done to the shareholders of the company being shown (*d*). And in a similar case, where the obligors pleaded that the money was not borrowed for the purposes of the act, that they were not authorized to make the bond, and that it was made contrary to the provisions of the special act, of which the obligee had notice, it was held, that the plea was bad, for there was an estoppel as to all the facts recited in the bond, unless it was shown that the bond was made for a distinct illegal purpose (*e*). So it is no answer to an action at law, brought by the assignee of a bond, to allege that the bond was given by the defendants to the assignor, by reason of a fraud which had been practised on third parties, and to whose nominees the defendants were bound to give the bond (*f*).

Pleas to actions on mortgages and bonds.

Where, under the terms of a settlement, the trustees had authority to invest money in any of the public stocks or funds of this kingdom, or on real securities, it was held to be a breach of trust to invest the trust funds in railway debentures. Sir J. Romilly, M. R., on this point said—

When it is a breach of trust to lend trust monies on railway securities.

"I cannot consider this a proper investment, or such a one as, under the power in this settlement, ought to have been made. Assuming this to be a real security, it is not sufficient for a trustee to say so, and rely upon that as his defence. It is his duty to consider the nature of the property and the conditions upon which it is held. It might possibly be involved in litigation, or subject to liabilities which may prevent its being an available security; and in this very case the security, under the provisions of the act of Parliament for making the railway, cannot be enforced in the ordinary manner in which real securities are made available. No ejectment can be brought, neither can any foreclosure be obtained. Repayment cannot be demanded for eight years; the security may be sold, but the value is diminished by the enjoyment being made reversionary, and the parties entitled in possession before the time of payment. In all respects, therefore, it was a breach of trust; and the practice of conveyancers confirms this; and in modern settlements, powers are introduced to invest the trust funds upon railway debentures" (*g*).

Where, however, executors or trustees find among their testator's property railway mortgages or debenture stock, they are not neces-

(*d*) *Hill v. Manchester and Salford Waterworks Co.*, 2 B. & Ad. 544.

(*e*) *Horton v. Westminster Improvement Commissioners*, 21 L. J. (Exch.) 297; 7 Exch. 780. See also *Royal British Bank v. Turquand*, 5 E. & B. 249; 6 E. & B. 327; 25 L. J. (Q. B.) 317; *Prince of Wales, &c., Assurance Co. v. Harding*, 27 L. J. (Q. B.) 297; *Agar v. Athenæum Life Assurance*

Society, 27 L. J. (C. P.) 95; *Athenæum Life Insurance Co. v. Pooley*, 28 L. J. (Ch.) 119.

(*f*) *Horton v. Westminster Improvement Commissioners*, ubi supra.

(*g*) *Mant v. Leith*, 21 L. J. (Ch.) 719; 16 Jur. 303; 15 Beav. 524. See also *Mortimore v. Mortimore*, 28 L. J. (Ch.) 558; 4 De G. & J. 472.

sarily bound to realize, or guilty of a breach of trust by omitting to do so (*h*).

2. *New Shares.*

Power to convert
loan into capital.
8 & 9 Vict. c. 16
(Appendix 24.)

With respect to the conversion of borrowed money into capital, the Companies Clauses Consolidation Act, enacts, that, if it be not otherwise provided by the special act, the company may raise the additional sum authorized to be borrowed by creating new shares instead of by borrowing, but such augmentation of capital must be authorized at a general meeting of the company: (Sect. 56.) Such additional capital is subject to the same provisions as to payment of calls, &c., as the original capital, except as to the time and amount of the calls, which may be fixed by the company: (Sect. 75.) If the old shares are at a premium, then, unless it be otherwise ordered by the special act, the new shares must be offered to the shareholders in proportion to their existing shares, such offer to be made in the manner prescribed: (Sect. 58.) Such new shares vest in the shareholders who shall accept them and pay the instalments due thereon, and if any shareholder fails for one month to accept them (*i*), or pay the instalments, the company may dispose of them: (Sect. 59.) If the old shares are not at a premium when the capital is augmented, the company may issue the new shares on such terms as they think fit: (Sect. 60.)

Decisions as to
the exercise of
an option to take
new shares.

Where a railway company resolved to raise money upon loan-notes, payable at the end of five years, with an option to the holders to convert them, at the expiration of three years, into shares, under the powers of an act, to be applied for as early as possible, and the company advertised for tenders, one half of the loans to be paid to the company when the tenders should be accepted (February, 1842), one quarter on or before the 15th of April, and the other quarter on or before the 15th of July following, it appeared that the loan was made by various persons, to whom, on the payment of the last instalment (July, 1842), loan-notes were delivered, promising to pay the sums expressed therein on the 15th of February, 1847, with an indorsement thereon referring to the resolution, and intimating that in pursuance thereof application was intended to be made to Parliament for an act, under the terms of which the bearer would be entitled, on the 15th of February, 1845, provided previous notice was given, to convert the loan-notes into shares, at the price mentioned in the resolution. An act was afterwards obtained, enabling the company to issue new shares of such amount, &c., as by the order of a meeting of the company should be determined. By a meeting subsequently held, it was

(*h*) *Mortimore v. Mortimore*, ubi supra.

(*i*) See post, p. 147.

resolved, that the new shares authorized by the act should be raised and allotted to and amongst the holders of loan-notes, in the manner and upon the terms directed by the act. Upon these facts, Sir J. Wigram, V. C., decided that the effect of the act, and the subsequent resolution of the company, was not to allot the new shares amongst all the loan-note holders unconditionally, but only as they had acquired a right to such allotment by virtue of their antecedent contract. Also, that the term of five years, at the end of which the notes were to be paid off, must be reckoned from February, 1842, when the first instalment of the loan was advanced, and that the three years, during which the holders were to have the option of converting the notes into shares, must be reckoned from the same time. And further, that from the nature of the property which was the subject of the option, time was of the essence of the contract (*k*).

Option to convert loan-notes into shares.

In another case, where a company resolved that every proprietor registered in the company's books, and also every holder of any scrip receipts who should deliver up the same, on or before the 10th day of August next, to be duly registered, should have the option of subscribing for one new share, in respect of every five shares which every such proprietor might then, or which every such scrip holder might, on the said 10th day of August, have registered in their respective names; and that the shares which should not be subscribed for under the option allowed by the above condition should be allotted by the directors to those proprietors who might, on or before the said 10th day of August, apply for any such shares, pro ratâ according to the number of shares so applied for by each proprietor, and it appeared that one of the registered proprietors, who was resident at Naples, was not apprized of the resolutions until the 12th of August, but on that day he wrote to the secretary of the company, declaring his option to take his proportion of the new shares; Sir L. Shadwell, V. C., was of opinion that the time fixed by the resolutions was final, and consequently that the plaintiff's declaration was too late to entitle him to claim the shares (*l*).

The Great Western R. Co. were authorized by act of Parliament to subscribe for 17,500 shares in the Metropolitan R. Co. These shares were taken by nominees of the G. W. R. Co. By a subsequent act the M. Co. were authorized to raise additional capital by the creation of new shares. At a general meeting of the M. Co. it was resolved that these shares should be allotted rateably among the holders of original shares. It was held by Wood, V. C., that neither the G. W. R. Co. nor their nominees were entitled to any

Railway Co. authorized to subscribe for certain shares not entitled to new shares in addition.

(*k*) *Campbell v. London and Brighton R. Co.*, 5 Hare, 519.

(*l*) *Pearson v. London and Croydon R. Co.*, 14 Sim. 541.

Option to convert
loan-notes into
shares.

new shares, as the G. W. R. Co. had no power to take the shares and would not be liable to calls (*m*).

The Companies Clauses Act, 1863 (*n*), which applies to companies authorized by special act passed after 28th July, 1863, and incorporating that act, contains some important provisions relating to "additional capital," that is, new ordinary shares or stock, and preference shares or stock; and also relating to "debenture stock," which includes mortgage preference stock, and funded debt (*o*).

But as the act itself is to be found at length in the Appendix it is not thought necessary to refer further to its provisions in this place.

(*m*) *Great Western R. Co. v. Metropolitan R. Co.*, 32 L. J. (Ch.) 383.

(*n*) 26 & 27 Vict. c. 118, s. 12, et seq.
See Appendix.
(*o*) Sect. 35.

CHAPTER V.

ON THE PERMISSIVE AND COMPULSORY POWERS TO TAKE OR INJURIOUSLY AFFECT LANDS TO CONSTRUCT A RAILWAY: AND OF THE PARTIES WHO MAY CLAIM COMPENSATION, AND FOR WHAT INJURIES.

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I. *Powers to take and purchase Lands.*1. *By Agreements made before the Act is obtained.*

WE shall first treat of contracts to take lands, entered into by railway companies under their permissive powers, and the subject naturally divides itself into two branches, *i. e.* first, where the contracts are made before the special act for making the railway is obtained; and, secondly, where they are made afterwards. The first branch has been fruitful of litigation, as we shall see upon an investigation of the authorities.

In the early days of railways it was frequently held, in conformity with a previous decision of Lord Eldon (*a*), that agreements made by landowners with promoters of railway companies to sell their lands,

How far contracts made by promoters are binding on company.

(a) *Vauxhall Bridge Co. v. Spencer*, Jac. 64. See 2 Madd. 356.

How far contracts made by promoters are binding on company.

Lord Cottenham's doctrine in *Edwards v. Grand Junction R. Co.*

and to withdraw or withhold opposition to a bill in Parliament, were not illegal, either as being a fraud upon the legislature or other landowners, or as being contrary to public policy; and landowners recovered from companies large sums of money which had been agreed by promoters to be paid them as the price of their land, with a view to secure the withdrawal of their opposition to such bills (b). And it was also held, that the fact of the landowner being a peer or member of Parliament did not render an agreement for the sale of his land at an exorbitant price the less valid, as such persons have as much right to sell their land for the highest price they can get as other people; though, of course, a substantive agreement by a member of the legislature to take money for his vote would be illegal (c).

Moreover, Lord Cottenham considered, that the company, when established under an act of Parliament, are entitled to all the rights, and subject to all the liabilities of the projectors, and ought to be regarded in equity as the successors and assignees of the projectors; and he more than once held, that the company were so far bound by agreements entered into by the promoters or provisional committee or other agents, previous to or during the progress of the bill through Parliament, that he granted injunctions to restrain companies, when incorporated, from exercising powers acquired through the medium of such agreements, without carrying the whole agreements into effect (d). And his decisions were for some time acquiesced in and followed by other judges, and even elicited expressions of approbation in the House of Lords. But of late years doubts have been thrown upon those decisions, which must therefore be considered to be somewhat shaken, though they have not hitherto been expressly overruled. These doubts are founded chiefly upon the ground, first, that the company when incorporated are not in fact the successors or assignees of the promoters, but generally consist of shareholders who were neither themselves the promoters, nor in any way connected with the promoters of the act, but became subscribers

(b) *Stanley v. Chester and Birkenhead R. Co.*, 1 Railw. C. 58; 9 Sim. 264; 3 Myl. & Cr. 773. *Lord Petre v. Eastern Counties R. Co.*, 1 Railw. C. 462; *Lord Howden v. Simpson*, 10 A. & E. 820; 3 Railw. C. 294; 9 Cl. & Fin. 61; *Doe v. London and Croydon R. Co.*, 1 Railw. C. 257; *Capper v. Earl of Lindsey*, 3 H. L. C. 293; *Hawkes v. Eastern Counties R. Co.*, 7 Railw. C. 188; 22 L. J. (Ch.) 77; 16 Jur. 1051; 3 De G. & Sm. 743; 1 De Gex, M. & Gord. 737; 5 H. L. C. 331; *Earl of Lindsey v. Great Northern R. Co.*, 10 Hare, 692.

(c) See the cases of *Lords Petre, Howden and Lindsey*, ubi supra. See also *Scottish North Eastern R. Co. v. Stewart*, 3 M'Q. 382.

(d) *Edwards v. Grand Junction R. Co.*, 1

Railw. C. 173; 1 Myl. & Cr. 650; *Stanley v. Chester and Birkenhead R. Co.*, ubi supra; *Lord Petre v. Eastern Counties R. Co.*, 1 Railw. C. 462; *Great Western R. Co. v. Birmingham and Oxford Junction R. Co.*, 2 Ph. 597, 605; 17 L. J. (Ch.) 243; *Earl of Lindsey v. Great Northern R. Co.*, 22 L. J. (Ch.) 995; 10 Hare, 664; *Gooday v. Colchester R. Co.*, 17 Beav. 132; *Eastern Counties R. Co. v. Hawkes*, 5 H. L. C. 356, 374—380. Of course a party, intending to require a substituted company to perform a contract made by him with other persons, must lose no time in asserting his rights, or equity will afford him no relief. *Greenhalgh v. Manchester and Birmingham R. Co.*, 1 Railw. C. 68; 9 Sim. 416; 3 Myl. & Cr. 784.

to the funds of the company after incorporation, upon the faith of the act of Parliament, which makes no allusion to any agreement entered into by the promoters; and to hold such subscribers bound by agreements entered into before the act was passed, and not mentioned in the act, would be a fraud upon them, as well as upon the legislature and other landowners, (as indeed was contended in the early cases): and, secondly, that the carrying out such agreements, by the payment of money out of the funds of the company when incorporated, is a misapplication of the funds of the company, and *ultra vires*. It cannot be denied that there is very great weight in these objections, and it would therefore seem that the only prudent course for a landowner, who is opposing a railway bill, to take, is either to obtain such an agreement as shall be personally binding upon some existing company, or individuals of responsibility, or else to try and get a clause recognizing his claim to compensation inserted in the act of Parliament, before he withdraws his opposition: though the insertion of such a clause is unusual. It will not be wise for him to rely on the chance of *the company*, when incorporated, adopting any agreement into which he may enter with the promoters (*e*), and even if the company does adopt such an agreement, it may turn out to be *ultra vires* and void: if *intra vires* of the company it may be binding on them. The arguments in favour of holding the company when incorporated to be bound by agreements entered into by the promoters or provisional committee are stated by Lord Cottenham in *Edwards v. Grand Junction R. Co.* (*f*); whilst those against holding the company liable are to be found in the judgments of Lord Cranworth in the House of Lords in *Preston v. Liverpool and Manchester Junction R. Co.* (*g*), and *Caledonian and Dumbartonshire Junction R. Co. v. Magistrates of Helensburgh* (*h*). They are of so much importance, that no apology is required for inserting them at some length.

How far contracts made by promoters are binding on company.

In *Edwards v. Grand Junction R. Co.*, Lord Cottenham, C., said:—

“The railway company contend that they being now a corporation are not bound by anything which may have passed, or by any contract which may have been entered into by the projectors of the company, before the act of incorporation.

(*e*) See *Leominster Canal Navigation v. Shrewsbury and Hereford R. Co.*, 26 L. J. (Ch.) 764; 3 K. & J. 654.

(*f*) 1 Railw. C. 173; 1 Myl. & Cr. 650. See also *Bedford and Cambridge R. Co. v. Stanley*, 32 L. J. (Ch.) 60.

(*g*) 5 H. L. C. 605; 25 L. J. (Ch.) 421.

(*h*) 2 M.Q. 391. In *Leominster Canal Navigation v. Shrewsbury and Hereford R. Co.*, ubi supra, Wood, V. C., speaking of this case, said, “That decision has only

gone to this extent, that that which the directors could not do after the formation of the company, certainly the provisional directors could not do before, for the purpose of binding the company. You cannot spend by anticipation before the act the money of your shareholders, for purposes for which afterwards you could not spend it, and which any single shareholder would have the option of restraining you from doing.”

Rule laid down
by Lord Cot-
tenham, C., in
*Edwards v. Grand
Junction R. Co.*

If this proposition could be supported, it would be of extensive consequence at this time, when so much property becomes every year subject to the power of these incorporated companies. The objection rests upon grounds purely technical, and those applicable only to actions at law. It is said that the company cannot be sued upon the contract, and that the agent entered into a personal contract, undertaking to procure from the company, when incorporated, a similar contract. It cannot be denied that the act of the agent was the act of the projectors of the railway; it was, therefore, the agreement of the parties seeking an act of incorporation that, when incorporated, certain acts should be done. The question is not whether there be any binding contract at law, but whether this Court will permit the company to use their powers under the act, in direct opposition to the arrangement made with the trustees before the act, and upon the faith of which they were permitted to obtain such powers. If the company and projectors cannot be identified, still it is clear that the company have succeeded to, and are now in possession of all that the projectors had before. They are entitled to all their rights and subject to all their liabilities. If any one individual had projected such a scheme, and in prosecution of it had entered into an arrangement, and then had sold and assigned all his interest in it to another, there could be no legal obligation between those who had dealt with the original projector and such purchaser; but in this Court it would be otherwise. So here, as the company stand in the place of the projectors, they cannot repudiate the arrangement into which such projectors have entered; they cannot exercise the powers given by Parliament to such projectors in their corporate capacity, and at the same time refuse to comply with those terms, upon the faith of which all opposition to their obtaining such powers was withheld.

“ The case of *East London Waterworks Co. v. Bailey* (i) was cited to prove that save in certain excepted cases the agent of a corporation must, in order to bind the corporation, be authorized by a power of attorney; but it does not therefore follow that corporations are not to be affected by equities, whether created by contract or otherwise, affecting those to whose position they succeed, and affecting rights and property over which they claim to exercise control. What right have the company to meddle with the road at all (k)? The powers under the act give them the right, but before that right was so conferred, it had been agreed that the right should only be used in a particular manner. Can the company exercise the right without regard to such an agreement? I am clearly of opinion that they cannot; and having before expressed my opinion that the contract is sufficiently proved, it follows that the injunction granted by the Vice-Chancellor is in my opinion proper, and that this motion to dissolve it must be refused with costs.

“ The case of *Vauxhall Bridge Co. v. Earl Spencer* (l) was cited for the trustees, and it certainly is a strong authority in favour of their claim; Lord Eldon having in that case expressed an opinion that the withdrawing opposition to a bill in Parliament might be a good consideration for a contract, and having recognized the right of an incorporated company to connect itself with a contract made by the projectors of the company before the act of incorporation. On the other hand, *Dance v. Girdler* (m) was cited for the railway company, but that was an attempt to make a surety liable beyond his contract; and Sir James Mansfield in his judgment in that case relied much upon the want of identity between the society with

(i) 4 Bing. 283.

(k) The great struggle in the case was upon the question whether a bridge to a turnpike-road over a railway should be fifty or thirty feet wide. The agreement was, that it should be the same width as

the turnpike-road, which was fifty feet; whilst the act said it should be not less than fifteen feet wide.

(l) 2 Madd. 356; Jac. 64.

(m) 1 B. & P. (N. R.) 34.

whom the contract was made and the corporation; and the question there was as to a legal liability, not as to an equitable right.

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"It was contended for the railway company, that to enforce this equity would be unjust towards the shareholders of the company who had no notice of the arrangement. To this two obvious answers may be made; first, that the Court cannot recognize any party interested in the corporation, but must look to the rights and liabilities of the corporation itself⁽ⁿ⁾; and secondly, that there is nothing in the effect of the injunction inconsistent with the provisions of the act; for although the act provides that bridges shall not be less than fifteen feet in width, it does not provide that they shall not be made wider. The company might under this act clearly agree that this or any other bridge should be fifty feet wide."

In *Preston v. Liverpool, Manchester, &c. R. Co. (o)*, Lord Cranworth, in allusion to that judgment of Lord Cottenham, said:—

Lord Cranworth's judgment in *Preston v. Liverpool, &c. R. Co.*

"The process of reasoning whereby Mr. Preston seeks to charge the company is this: He says, 'I entered into a contract with the projectors of the company, and consequently I have a right to assume that by my withdrawing my opposition, they succeeded in inducing the legislature to constitute this company; and the company therefore comes in *esse cum onere*, and must take existence with that burden attached to it, and must fulfil this amongst other contracts.'

"In the able argument which was addressed to us by the learned Solicitor-General, that doctrine was very much questioned, and had it been necessary upon the present occasion fully to make up my mind on the subject, whether that doctrine is correct or not, I should have desired much further time for consideration. I am aware that that is a doctrine which was acted upon by Lord Cottenham; and the Solicitor-General, indeed, endeavoured to explain some of the cases to show that he had not quite gone that length. I confess I think it must be taken, that that doctrine has been acted upon in a great many cases by Lord Cottenham, and it has been acted upon in so many cases, that it would be very inexpedient, off-hand, to say that that doctrine cannot be sustained when one considers how much may have been done upon the faith of it. I must, however, own that when the subject comes to be closely examined, I think there are objections of the gravest nature to its adoption, objections which do not seem sufficiently to have pressed upon the mind of his lordship. Lord Cottenham acted upon this principle, that the railway company was the successor of the projectors, or the assignee, if one may say so, of the projectors, and must take existence, subject to the burdens which had been contracted for by those who were the promoters of it, and to whom it owed its existence. It is manifest that that doctrine is open to great objections, for when a company is incorporated by act of Parliament, hundreds, I may say thousands, of persons from all parts of the kingdom come and purchase shares upon the faith that the act of Parliament tells them what their liabilities are; and in what position are they placed, when upon looking for their dividend they are told, 'You can have no dividend because contracts to the amount of a million (for it might go to that extent) have been entered into to pay persons sums of money which will come out of your capital, and subject to which obligations you own your existence?' The answer that may be made to that is, 'I have had no notice of that; I see in the act of Parliament, which is my title deed, that there is no allusion to anything of the sort.'

"Now and then there is on the face of an act of Parliament a stipulation that the lands of Mr. Johnson or Mr. Jackson are not to be taken without such and such

⁽ⁿ⁾ See also per Lord St. Leonard's in *Gex, M. & G. 754; 5 H. L. C. 370.*
Hawkes v. Eastern Counties R. Co., 1 De ^(o) 5 H. L. C. 617.

Preston v. Liverpool, &c. R. Co.

stipulations. Of course no complaint can be made when that is found, but I must say that the complaints which may really and seriously be made by persons in respect of their being bound by contracts not apparent upon the face of the act of Parliament are formidable to the last degree. Observe, my lords, to what this doctrine leads. There is that case of Lord Petre, at which everybody starts when he hears it, in which there was a contract entered into by the projectors of a company, that if Lord Petre would withdraw his opposition, they would pay him 120,000*l.* for that which was not worth above 4,000*l.* It may be that some of those who purchased the shares of that company were aware of that contract; but in all probability that was not the case with the majority. If this might be done once, as in the case of Lord Petre, it might have been done with ten other landed proprietors, and there would have been above a million of the capital of the subscribers contracted away from them without any sort of knowledge upon their part, and for purposes quite foreign from those for which they subscribed. I, however, only point out this because there may be considerations which may outweigh those which I have now mentioned, and it may be when the matter comes to be looked into more closely, notwithstanding all those formidable objections, that Lord Cottenham's view of the case is the correct one; at all events, having been acted upon so long, it may be inexpedient hastily to depart from it. If, therefore, this case had turned upon the validity or non-validity of that doctrine, I should have desired of your lordships further time to consider as to the course which was to be taken, but it does not."

His lordship then proceeded to examine the contract in question, and showed that it was conditional on the railway being made, and proceeded to say:—

"I do not hesitate to say that even adopting Lord Cottenham's doctrine, and supposing contracts made by projectors are afterwards to be binding upon companies, still that doctrine cannot apply here; it can only be that contracts which the railway company might lawfully have entered into after the company had been formed, shall be binding if they were entered into by those who might be considered as agents for the company before the company came into corporate existence."

"In another case (*p*), Lord Campbell stated that a contract like this would have been *ultra vires*. That is very high confirmation of the doctrine I am now declaring; but I cannot hesitate to say, even if Lord Campbell had stated nothing of the sort, that I should have had no possible doubt that it is *ultra vires* of a corporation, established for the purpose of applying the funds of its subscribers in making a railway, to enter into a covenant to pay 5,000*l.* to a person for not opposing them in Parliament. To do so is entirely beyond the powers intended to be conferred, or that ever were conferred, upon the directors of a railway company. I state this because I have no wish to shrink from giving that as my opinion. I go entirely upon the other ground as to the construction of the agreement here."

Lord Cranworth's judgment in *Caledonian, &c. R. Co. v. Magistrates of Helensburgh*.

Again, in *Caledonian and Dumbartonshire Junction R. Co. v. Magistrates of Helensburgh* (*q*), his lordship said:—

"The important question raised in this case is, whether the appellants can be

(*p*) *Eastern Counties R. Co. v. Hawkes*, 5 H. L. C. 356; *Gage v. Newmarket R. Co.*, 18 Q. B. 469.

(*q*) 3 M'Q. 891. This judgment was much considered and very long delayed on account of a suggestion that *Preston v.*

Liverpool, &c. R. Co., then before the House, might involve similar points; but it did not ultimately do so. Lord Brougham concurred in Lord Cranworth's judgment, 2 M'Q. 422.

compelled to perform the engagement entered into by the committee of management, on behalf of the projected company, before it had actually come into existence.

*Caledonian, &c.
R. Co. v. Magis-
trates of Helens-
burgh.*

"On behalf of the respondents it was argued, that, though the agreement in question was not entered into by the appellants themselves, that is, by the railway company, yet it was entered into by a committee of management, formed for the object of obtaining the act of Parliament by which the appellants were afterwards incorporated, and so that on principle as well as on authority the appellants are bound to implement what the committee had so undertaken to do.

"Suppose this question not to be settled by the authority of previous decisions, I cannot think that the proposition thus put forward by the pursuers below can be supported. It proceeds on the ground that the committee of management ought to be treated in the nature of agents for the company which owes its existence to their exertions; and that when the company came into being, it was from its very birth (so to say) bound to fulfil the contracts by which its projectors had stipulated that it should be bound.

"This reasoning rests on the assumption that a railway company, when established by Parliament, is in substance, though not in form, a body succeeding to the rights and coming into the place of the projectors. On no other hypothesis can such a company be bound by engagements to which it was not a party. It therefore becomes necessary to consider whether this is a true view of the relative positions of a company established by the legislature and of the persons, whether called a committee of management or provisional committee, or a body of projectors, who have applied to and obtained from Parliament the act constituting the company. When such a body apply for an act of incorporation, what they ask for of the legislature is not an act incorporating and giving powers to those only who are applying—not necessarily even incorporating and giving powers to any of them—but an act incorporating all persons who may be willing to subscribe the specified sums and so to become shareholders in the company. If the legislature accedes to such an application, the act when passed becomes the charter of the company, prescribing its duties and declaring its rights; and all persons becoming shareholders have a right to consider that they are entitled to all the benefits held out to them by the act, and liable to no obligations beyond those which are there indicated. If this be not the true principle, the legislature might be making itself ancillary to serious injury. When a capitalist, believing in the probable success of any particular project sanctioned by the legislature, is satisfied with the terms of incorporation embodied in the act, he reasonably advances his money on the faith of those terms; and if the project turns out a failure he has no right to complain. The speculation was one as to the prudence of which he had the means of judging, and no injustice is done to him if in the result he sustains a loss.

"But surely the case is very different, if behind the terms of incorporation expressed in the act, there are others of which the public have no notice, but which are to be held equally binding on the shareholders as if they had formed part of the charter of incorporation. If such secret or unexpected terms are to be held binding on those who take shares, the result may be ruinous to those who act on the faith of what appears on the face of the legislative incorporation. The principle on which all railway acts, and acts of a similar character, proceed, is to specify the sum to be raised and the shares into which the funds of the company are to be divided, to incorporate the shareholders, and to prescribe the objects to which the funds are to be applied. It is inconsistent with the policy of such acts to hold that there can be any other terms binding on those who subscribe their money, beyond what appears on the face of the act itself.

"Not only is such a doctrine calculated to occasion injury to shareholders, but it

*Caledonian, &c.
R. Co. v. Magis-
trates of Helens-
burgh.*

may often be a fraud, or, at all events, a surprise on the legislature. The statutory powers are given on the faith of the terms apparent on the act itself. It may well be that the additional terms, if communicated to Parliament, would have prevented the passing of the act at all.

“Special terms as to particular cases or particular persons are often made the subject of special clauses, and then neither the legislature nor any person taking shares can complain. The whole truth is disclosed. The legislature sanctions the special provision and the shareholder purchases his shares with full notice of the exceptional enactment. I know that it is said to be a common practice, sanctioned by committees of both houses when these bills are before them, not to insist on the insertion of these special and private clauses at the instance of persons alleging grounds for their introduction, if agreements between the promoters and the persons asking for the special clauses are entered into, whereby the promoters engage that the company when incorporated shall give to those who are asking for special enactments the same benefit, as if there were clauses in the bills to the effect asked for. That may be. Of the propriety of such a practice I am not bound to say anything. But the question is what is the effect of such arrangements? Do they bind the future company, or those who enter into the agreement? I need hardly say that the practice of committees cannot alter the law of the land, and I confess I can discover no principle, legal or equitable, whereby such contracts can be held to be obligatory on the company.

“And here I must remark that I cannot accede to the argument that the distinction between the company and those who may previously to its formation have entered into contracts purporting to bind it, is one of a technical nature or calculated to occasion substantial injustice to any one. The suggestion that the distinction is one of a technical nature, proceeds on the fallacy that the company are substantially the same persons as the projectors, only embodied in a new form. This is not so. Probably, though not certainly, the projectors may be among the shareholders, but the great bulk of the shareholders will always be persons who have taken shares on the faith of the act after it has passed or in its progress through Parliament, and who know nothing of what is not apparent on the face of the act.

“In holding that the company is a body different from its projectors in substance as well as in form, I am acting on what is the mere truth, and no injustice can arise to those who have dealt with the projectors, for against them, and all under whose authority they acted, there will be a clear right of action if the company does not fulfil the engagements which they have contracted that it shall perform, and that is surely all which those who have dealt with the projectors can claim as their right. For these reasons I am of opinion that there is no ground for holding that a company is bound by any engagement made by those who obtained its act of incorporation, unless those engagements are embodied in the terms of the act itself.

“It remains, however, to be considered how far this question, whatever may be my opinion of its merits, has been settled by authority. The three cases mainly relied on in support of the doctrine contended for by the respondents, who were pursuers below, namely, that a railway company, after it has obtained its act of incorporation, is bound by the contracts of those by whom the act was obtained, are those of *Edwards v. Grand Junction R. Co.*, *Stanley v. Chester and Birkenhead R. Co.*, and *Lord Petre v. Eastern Counties R. Co.*”

His lordship then stated the facts and part of Lord Cottenham's judgment (r) in the first of those cases, and proceeded:—

“In reasoning on this and other cases decided by Lord Cottenham, it has been

(r) As given above, p. 151.

contended that his judgments went no further than to decide that if the incorporated company took the benefit of the contracts entered into by third persons with the promoters, they, the company, must at the same time perform the obligations binding the promoters. I cannot reconcile such a supposition either with what fell from him in that case, or with the decision itself. The language which I have quoted seems to me to show clearly that he carried his views much further. He says expressly that the company are entitled to all the rights and subject to the liabilities of the projectors. He assumes that the company stand in place of the projectors, and treats the powers of the act as powers given by Parliament to the projectors, and the injunction restrains the company from exercising a power which they possessed independently of any contract with the road trustees, because such an exercise would be at variance with the contract between the trustees and the projectors. The judgment further proceeds upon the assumption that the forbearing to oppose the bill was a consideration moving from the trustees to the company, and not solely to the projectors. It is therefore plain that, according to Lord Cottenham's view of the law, the company, when incorporated, cannot exercise its powers in violation of contracts entered into by the projectors before the incorporation."

*Caledonian, &c.
R. Co. v. Magis-
trates of Helens-
burgh.*

His lordship then stated the cases of *Stanley* and *Lord Petre*, and added:—

"In this, as in the other cases, Lord Cottenham clearly considered that the company was bound by the contract of the promoters. Lord Petre's case is a very strong one, because the bill contained a statement that the payment of the £120,000 would so reduce the funds of the company as to make it impossible for them to complete their line, and yet Lord Cottenham considered that Lord Petre had a right as against the company to insist on the contract entered into by the six projectors, although the company refused to confirm it by deed under their seal.

"In one of these cases Lord Cottenham referred to *Vauxhall Bridge Co. v. Lord Spencer (s)*, as in some degree sustaining his views of the law on this subject."

His lordship stated that case, and proceeded:—

"When that case is examined it is plain that it affords no countenance for the doctrine on which Lord Cottenham acted in the cases I have referred to. In the *Vauxhall Bridge* case there was no attempt to make any one liable on the bond except the obligors, and the only question was as to the validity of the engagement itself. It is true that the £5,000 was in fact advanced out of the funds of the company, but that arrangement did not form any part of the contract with the *Battersea Bridge* proprietors, who looked only to the persons with whom they contracted. The decision therefore may be disregarded as not bearing on the present question.

"The result is, that in the three cases to which I have referred, Lord Cottenham acted on the principle that a company incorporated by act of Parliament is, or may be, bound by the previous contracts of those by whom the act of incorporation has been obtained. I have stated my reason for thinking that such a doctrine rests on no sound principle, and may lead, as in Lord Petre's case I think it did lead, to great injustice. And if therefore the case now to be decided was in all respects similar to the three cases I have referred to, what I should have to decide would be, whether I should advise your lordships to adhere to the precedents established by

(s) 2 Madd. 356; Jac. 64.

*Caledonian, &c.
R. Co. v. Magis-
trates of Helens-
burgh.*

Lord Cottenham on the ground that it is unsafe to act against a series of decisions, even though they may appear not to rest on any solid foundation, or to depart from them and to adopt what I consider a just and more correct principle.

"I am, however, relieved from the necessity of coming to any positive decision on this point, because I think the present case is distinguishable from those decided by Lord Cottenham, and so that even if those authorities are to be held binding, still they do not govern the present case.

"In all the cases before Lord Cottenham, the contracts which he held to be binding on the company were contracts to do things warranted by the terms of the incorporation."

His lordship then proceeded to show that in the case before the House, what the projectors had contracted to do was to apply funds, raised under legislative authority for the purpose of the railway, to an object foreign from that of the railway, namely, the construction of a pier and harbour at Helensburgh, and said:—

"There are numerous authorities both in England and in Scotland to show that such a diversion of the funds from their statutable destination cannot be permitted."

Having then referred to one or two cases on this point, his lordship concluded:—

"I am therefore of opinion, that, even supposing the law to be (and in this respect the laws of England and Scotland are the same), that in respect of contracts entered into by the projectors of a company, that the company when formed shall do acts within the scope of their powers in a particular mode or on specified terms, the company is bound, still that doctrine does not apply here, where the act to be done was not an act for the effecting of which the company when established could lawfully devote its funds."

Construction and
effect of contracts
between pro-
motors and land-
owners.

Let us now proceed to consider some of the cases which have arisen in the Courts, as to the construction of contracts entered into for the purchase of land before the special act is obtained, and as to the remedies available to the vendors of such land in cases where the contracts have not been carried into effect; first premising that contracts of this nature must of course, in general, be construed and governed by the same rules as other contracts of a similar kind; and that, in general, no proceedings, either at law or in equity, can be taken against the company when incorporated, upon an agreement entered into by the promoters, unless after incorporation the company have in some way ratified and adopted the agreement (*t*).

This latter difficulty was got over, in the cases of *Webb* and *Lord James Stuart* (*u*), by agreement. And in another case, where a landowner withdrew his opposition in Parliament to a railway bill,

(*t*) In *Bedford and Cambridge R. Co. v. Stanley*, 32 L. J. (Ch.) 60, Wood, V. C., held that the company, by giving notice to treat and taking possession under compulsory powers, had waived an agreement

made by the promoters with the landowner, and therefore were not entitled to a decree for specific performance of it.

(*u*) *Post*, pp. 163, 164.

upon an agreement with the promoters that the company would take his land on certain terms, and after the passing of the act brought an action for breach of the agreement against the promoters, which action was stayed, on the company being made by arrangement defendants to a new action, and suffering judgment by default for the demand: it was held that the company thereby adopted the agreement, whether it would otherwise have been binding on them or not, and that it was not vitiated by one of its terms being that the company should pay the costs of the landowner's opposition to the bill (v).

Where the contract entered into by the promoters amounts to an absolute agreement on their part, that the company will take and pay for the land if the vendor supports the bill and it passes into a law; then upon the performance of those conditions, the vendor may maintain an action for damages against the promoters, if from any circumstance the company fail to carry out the agreement.

Construction of contracts between promoters and landowners.

Thus, in *Bland v. Crowley* (x), although the judges of the Exchequer differed in opinion as to the construction of a contract entered into by the provisional directors of a company, who promoted a railway bill in Parliament, a majority of this Court held the plaintiff entitled to recover in an action against the promoters. The declaration stated, that by agreement between the defendants and the plaintiff, the plaintiff covenanted that he would accede to the bill, and the defendants covenanted that, in the event of the bill passing into a law, the company would pay the plaintiff for so much of his land as should be intersected by the railway, at a certain rate per acre, and secondly, that they would pay him 3,000*l.* in full compensation for the general damage which the railway might do to the mansion and estate, including the crossing of the road near the park entrance, the lowering the road, the obstruction of views, disturbance of privacy of the park, and the expense of temporary residence during the progress of the works, the depreciation as a residence, the additional expense in the cultivation of farms by the alteration in the road, and all other damage to be done to the mansion and park. It was then alleged that the plaintiff assented to the bill, and that it passed into a law; that the company entered on the plaintiff's lands and cut down trees; and although seven acres were intersected and severed by the railway, and the park and mansion deteriorated, yet neither the company nor the defendants had paid the plaintiff the stipulated price per acre nor the 3,000*l.* The defendants pleaded, that the company did not enter on the plaintiff's land; and also, that the quantity of the plaintiff's land intersected by the railway was not required by the company

Bland v. Crowley.

(v) *Williams v. St. George's Harbour Co.*,
2 De G. & J. 547; 24 Beav. 339.

(x) 6 Exch. 522; 20 L. J. (Exch.) 218.

Construction of
contracts.

Bland v. Crowley.

for the purposes of the railway, nor was it severed from the remainder of the fields. The question raised by the pleadings on demurrer was, whether the payment of the 3,000*l.* depended upon the company's entering upon the plaintiff's land.

A majority of the Court (*y*) were of opinion that the defendants had bound themselves to pay the sum immediately after the passing of the act, although the railroad should not be constructed, or any damage done to the plaintiff. The defendants had covenanted in the event of the bill passing into a law, first, that the company should pay, at a certain rate per acre, for all land that might be required, and for damage by severance. If no land should be required, the stipulated price would not be payable; as none was required, the defendants could not be called upon to pay any part of the price. The second covenant was, that the company were to pay 3,000*l.* to the plaintiff in full compensation for the general damage which the line of railway should or might do to the mansion-house, including certain specified damage, and all other damage to the mansion-house and park. This latter covenant was a distinct and separate one, and not made contingent upon the company requiring the land. The reasonable construction of the covenant therefore was, that the 3,000*l.* was really the price of buying off the plaintiff's opposition, and the plaintiff having consented to the bill passing, he was entitled to recover it.

Pollock, C. B., on the other hand, was of opinion that the plaintiff was not entitled to recover in the action, and that the agreement had reference only to the question, which upon the passing of the act would arise between the plaintiff and the company, if the plaintiff's lands were taken, and that it meant to provide that instead of resorting to arbitrators or a jury, the claim should at once be considered to be settled by the agreement, the land at so much per acre, and the general damage at a gross sum, but that it was not intended to accelerate the payment of either sum, still less to make the latter payment of 3,000*l.* payable instant, wholly irrespective of whether any land should be taken or any damage done.

*Capper v. Earl of
Lindsey.*

Shortly after this decision, *Capper v. Earl of Lindsey* (*z*), which was also an action in covenant against promoters, was brought to the House of Lords, on appeal from the Exchequer Chamber, and the judges were summoned, and delivered an unanimous opinion that the plaintiff was entitled to recover.

In that case a landholder, through whose estate a part of a pro-

(*y*) Lord Wensleydale and Platt, B.

(*z*) The Court of Exchequer decided that the plea was an answer to the action; 1 Exch. 579. This decision was reversed in the Exchequer Chamber; 2 Exch. 801.

The House of Lords confirmed the decision in the Exchequer Chamber; 3 H. L. C. 293. See also *Lindsey v. Great Northern R. Co.*, 22 L. J. (Ch.) 995; 10 Hare, 664.

jected railway was to pass, became a party to a deed with the projectors of the railway, by which he covenanted to withdraw his opposition to their bill, and to oppose a rival bill, and they covenanted to pay him a certain sum of money, in case their bill should pass within six months from the date of the deed, or to pay him a different sum, if the rival bill should pass within eighteen months from the date of the deed. It was then provided, that, if the bill of these projectors should not be passed within six months from the date of the agreement, either party might put an end to the agreement by a notice. The deed then contained a covenant on the part of the projectors, by which they agreed, if the two companies should be amalgamated, to pay a certain sum, within three months after such amalgamation. The two companies were afterwards amalgamated, but no bill ever passed at the instance of these projectors alone, and they subsequently gave a notice to put an end to the agreement. The action was brought against the projectors on that clause of the deed by which the plaintiff was to receive a sum of money, within three months after the amalgamation of the companies; and the defendants pleaded that their bill had never passed into a law; that at the end of six months they had given notice to put an end to the agreement, at which time no part of the line of railway had been made on the estate of the plaintiff, nor had his lands been taken by the amalgamated company. The House of Lords decided, that the right to payment did not depend upon the fact of making a part of the railway of the amalgamated company on the plaintiff's estate, or taking or using or doing any injury to his land, but that the right to it depended simply on the effluxion of three months time after the passing of the Amalgamation Act, and the plea was consequently held bad; and the judgment of the Court below in favour of the plaintiff was affirmed.

But if it clearly appears from the contract, that the vendor is not to be paid the stipulated price, unless the company when incorporated require and actually take the land, then the contract is considered as conditional on the taking of the land; and if, in consequence of the abandonment of the railway from inability to raise the necessary funds or from any other cause, the company do not take the land, then neither they nor the promoters who signed the contract are bound to pay the stipulated price, no action is maintainable for it, or for damages for the nonpayment of it, nor will a Court of Equity decree specific performance.

No action lies where contract is conditional on company taking the land.

This was decided in *Gage v. Newmarket R. Co. (a)*. In that case a railway company, who were promoting in Parliament a bill for an extension of their line, which, if made, would pass through the lands

Gage v. Newmarket R. Co.

(a) 21 L. J. (Q. B.) 398; 7 Railw. C. 168; 18 Q. B. 457.

Conditional contracts.

Gage v. Newmarket R. Co.

of the plaintiff, covenanted, "that in the event of the proposed bill passing in the then session of Parliament, the company would, before they should enter upon any part of the plaintiff's lands, pay to him 4,900*l.* purchase-money for any portion, not exceeding forty-three acres, which the company might, under the powers of their act, require and take for the purposes of their undertaking; and that in addition to the purchase-money, the company should pay to the plaintiff, before they should enter upon any part of his land, 7,100*l.*, as landlord's compensation for the damage arising to his estate by the severance thereof, in respect of the lands, not exceeding forty-three acres, to be taken by them." The Court decided that the company were not liable to pay either of the above-mentioned sums unless they entered upon some part of the lands. Lord Campbell, C. J., delivered judgment as follows:—

"The question we have to determine is, whether, the company never having entered upon any part of the plaintiff's lands, he is now entitled to sue for these two sums, or either of them? The 4,900*l.* is declared to be the purchase-money for the land to be required and taken; and the only time of payment mentioned is before the company enter upon the land. Therefore, if no land is required or taken, and the company never enter on any part of the land, there seems great difficulty in saying that there has been a breach of covenant in not paying the money. So, the 7,100*l.* is declared to be a compensation for severance of the land taken from the rest of the plaintiff's land, and the same time of payment is defined. But there has been no severance to be compensated, and the time for payment has not arrived. The deed does not bargain for a sum of money to be paid absolutely by the company to the plaintiff, as a consideration for his withdrawing his opposition to the bill, but provides a peculiar mode of estimating the value of the land to be taken, and of the compensation to be made for severance-damage, instead of the modes pointed out by the general acts upon this subject. We, therefore, do not think that the company can be considered as having absolutely covenanted to pay 12,000*l.* to the plaintiff in a reasonable time after the passing of the act. If this deed could bear such a construction, we should have thought it so far *ultra vires* and void."

Specific performance refused.

Preston v. Liverpool Junction R. Co.

The case of *Preston v. Liverpool, Manchester, &c., R. Co.* (b) was decided on similar grounds. The plaintiff had agreed with the projectors of the company that he would assent to a railway being made through his property, as laid down in the deposited plans of the company, upon condition that in case the company should in that or any subsequent session obtain an act of incorporation, the company should pay him 1,000*l.* for all lands required by the company for the due making of the railway, and the further sum of 4,000*l.* for residential injury to the estate; that a tunnel should be made in a particular part of the property, and a passenger station made at a spot indi-

(b) 1 Sim. (N. S.) 586; 21 L. J. (Ch.) 61; 17 Beav. 114; 5 H. L. C. 605. See an extract from the judgment of the House of Lords, ante, p. 153. The cases of *Edinburgh, Perth and Dundee R. Co. v. Phillip*, 2

M'Q. 514, and *Scottish North Eastern R. Co. v. Stewart*, 3 M'Q. 382, were decided on similar grounds. See also *Eastern Counties R. Co. v. Hawkes*, 5 H. L. C. 359, per Lord Campbell.

cated. The plaintiff thereupon withdrew his opposition to the bill, and the company obtained an act, and proceeded to survey the plaintiff's land, but subsequently the project of making the railway was abandoned. The plaintiff thereupon filed his bill for specific performance of the contract. The Master of the Rolls, however, dismissed it, and the plaintiff appealed to the House of Lords, when the decision of the Master of the Rolls was affirmed, on the ground that the contract was conditional on the railway being made, and as it was abandoned the plaintiff was not entitled to specific performance.

Specific performance refused.
Preston v. Liverpool Junction R. Co.

Upon similar principles in *Webb v. Direct London and Portsmouth R. Co.* (c), when the agreement was of a vague and contingent nature, specific performance was refused in equity. There an agreement made by the promoters, and, after the passing of their act, formally adopted by the company by deed under seal, stipulated that in consideration that an opposition to a bill in Parliament should be withdrawn, the company should pass over the plaintiff's land in a specified line, and construct certain accommodation works; and then, by the concluding clause, it was agreed—that the company should pay to the plaintiff 4,500*l.*, together with his costs incurred, before the company should enter on any of the lands of the plaintiff, for the purpose of making the railway, and that all timber and other trees on the lands to be taken by the company should be the property of the plaintiff. The 4,500*l.* was to be the purchase-money for the lands to be taken by the company for the formation of their railway, not exceeding eight acres, and for consequential damage. The company afterwards entered upon the plaintiff's land for the purpose only of surveying and taking levels, but ultimately abandoned the undertaking and refused to pay the 4,500*l.*, and Sir G. Turner, V. C., decreed a specific performance of the contract (d); but on appeal to the Lords Justices, that decision was reversed, but without prejudice to the right of the plaintiff to bring an action. The Court of Appeal seemed to doubt whether, under the circumstances, there was any contract at all, and whether the whole was not conditional on the existence and formation of the railway. But assuming that the instrument did amount to a contract, the Court held that it was not a case for specific performance. Lord Justice Cranworth said:—

Webb v. Direct London and Portsmouth R. Co.

“This is not only a case in which we ought not to interfere, but it is a case in which we should be exactly reversing the order of things, and making the machinery of this Court instrumental in doing injustice if we did interfere, because the only relief we could give would be to decree the payment of 4,500*l.* But here it is

(c) 21 L. J. (Ch.) 337; 16 Jur. 323; 1 R. Co., 20 L. J. (Ch.) 566; 9 Hare, 129; 1 De Gex, M. & Gord. 521.

(d) *Webb v. Direct London and Portsmouth*

Specific performance refused.
*Webb v. Direct
 London and
 Portsmouth R. Co.*

admitted, that what the contract amounts to is really this:—a contract to pay 4,500*l.*: to select eight acres of the plaintiff's land, and take it from him; and for such land and consequential damage to pay the 4,500*l.* Now, what the plaintiff would have to do at law, as I believe, would be to state in his declaration this contract, and to allege as a breach of it on the part of the defendants, that they had not taken the eight acres of land, nor paid the 4,500*l.* The amount of damage to be calculated would then, as I conceive, be a calculation made on the aggregate, what, taking all these circumstances into consideration, will do justice? Whereas the relief that would be afforded in this Court would be positive injustice. It would be giving 4,500*l.* as the purchase-money for that which they have not taken, and which, I believe (for there is reason to think that their parliamentary powers are gone), they never can now take. I do not, however, wish to commit myself on that subject. It may be that they could still take it and resell it. At all events, it is one of those cases in which, assuming the instrument to amount to what the plaintiff says it amounts to, a contract to pay 4,500*l.* by way of purchase-money, and compensation for damage to be done to other land, he has the ready means of obtaining complete redress at law, and we think to that redress he ought to be left."

*Lord James
 Stuart v. London
 and North-
 Western Railway
 Company.*

This case was followed by *Lord James Stuart v. L. and N. W. R. Co. (e)*. In this case the following agreement was entered into in consideration of the withdrawal of an opposition to the company's bill by the Marquis of Bute:—"Watford and Dunstable Railway.—Heds of agreement for the purchase of the Marquis of Bute's land required by the above railway. As to A (*f*), the company were to give 400*l.* an acre for the land required for the railway, and an additional 100*l.* for making a particular road. As to B, which was land laid out for building purposes, and was called 'The Seven Acres,' the company were to give 1,250*l.* an acre, for seven acres. As to C, they were to give 400*l.* an acre, for what was required; and as to D, they were to give 250*l.* per acre; besides which, they were to pay 1,000*l.* for depreciation of homesteads, &c." The agreement then contained the following clause:—"The above prices refer to the quantities of land required for the railway, and to the contents of the roads and several portions which are respectively to be accurately measured." This agreement having been executed, the opposition to the bill was withdrawn, and the company obtained their act; but subsequently they abandoned the line of the railway over the lands in question, and the plaintiff thereupon, shortly before the compulsory powers of the company would expire, filed a bill for specific performance of the contract. Sir John Romilly, M. R., following the decision of Vice-Chancellor Turner in the last-mentioned case, decreed a specific performance (*g*), but on appeal this decree was

(*e*) 21 L. J. (Ch.) 450; 16 Jur. 531; 1 De Gex, M. & Gord. 721.

(*f*) The body of the agreement referred to a map at the end. There were four portions of land comprised in it, distinguished therein by the letters A, B, C and D, which

respectively referred to the map. In this case the company were willing to admit an adoption by them of the agreement, which was in fact signed by their agents.

(*g*) 16 Jur. 209; 21 L. J. (Ch.) 451, n. (1).

also reversed by the Lords Justices. Lord Justice Cranworth said:—

Specific performance refused.
Lord James Stuart v. London and North-Western R. Co.

"This case was decided by his Honor the Master of the Rolls, on the authority of *Webb v. Direct London and Portsmouth R. Co.* (h); not as that case now stands, it having been brought by appeal to this Court, but as it was after the decision of it by his Honor Vice-Chancellor Turner. As I understand from counsel, the Master of the Rolls seemed to intimate an opinion that but for that authority, probably, his decision might not have been such as, in fact, it was. If that be so, inasmuch as *Webb v. Direct London and Portsmouth R. Co.* has since been decided otherwise than it was decided by Vice-Chancellor Turner, we have not, in fact, the duty of substantially overruling anything that was meant to be decided by the Master of the Rolls, and we shall be acting in conformity with what would probably have been his opinion, but for a decision which he then thought binding upon him. I think this is a weaker case than *Webb's* case, so far as the plaintiffs are concerned. It is perhaps not necessary, and perhaps not proper, to give any opinion about the construction of the agreement, but it seems to me much more doubtful whether there was any binding contract at all. Upon that, however, I give no opinion. The ground on which we proceeded in *Webb's* case was this, that whether it was a contract or not, the circumstances of the case made it such that it was not fit for this court to interfere by way of specific performance, because these two circumstances conspired: first, that complete relief might be obtained at law, if the parties were entitled to any relief; and secondly, the principle of mutuality wholly failed, for it was impossible for the company to hold the land for their benefit in consideration of the money which they were to pay. Now, it appears to me that that principle applies precisely in the same way in this case as it did in that."

Lord Justice K. Bruce was also unable to view the case as one for specific performance. His Lordship said:—

"I am of opinion that the language of the document in parts of it necessary to be construed and acted upon, if there is to be a decree of any kind for specific performance against the defendants, is too vague, too uncertain, too obscure, to enable this Court to act with safety or propriety for any such purpose. The plaintiffs must, I conceive, be left to proceed at law as they may be advised."

The general grounds upon which Courts of Equity will decree specific performance in these cases is thus stated by Lord St. Leonards in *Eastern Counties R. Co. v. Hawkes* (i):—

Eastern Counties R. Co. v. Hawkes.

"In cases of contracts binding on railway companies, in the view of equity, the Court goes beyond the law. Now specific performance is the right of every seller as well as of every purchaser, unless it can be displaced. It has been said, but has long since been overruled, that a seller may go to law as he only wants the money, whereas the purchaser wants the estate, but a seller wants the exact sum agreed to be paid to him, and he wants to divest himself legally of the estate, which, after the contract, was no longer vested in him beneficially. This is accomplished by specific performance, whereas at law he would be left with the estate on his hands, and would recover damages only according to the views of a jury. He is entitled to a complete remedy, and if you refuse him a specific performance, you deprive

(h) Ante, 163.

V. C., in *Bedford and Cambridge R. Co. v. Stanley*, 32 L. J. (Ch.) 62.

(i) 5 H. L. C. 376. And see per Wood,

Whether specific performance will be decreed.

Eastern Counties R. Co. v. Hawkes.

him of that which you accord to the purchaser. Look at the consequence. Equity, immediately after the contract, considers the purchaser as owner of the estate; he may sell or devise it; it would descend to his heir; it is no longer the property of the seller; on the other hand, the money, the price, belongs to the seller; he may dispose of it as part of his personal estate, and it would go to his personal representatives as such. Now, if you capriciously withhold specific relief, a seller can never be sure what is the nature of his interest; as, for example, whether the estate will go to his heir, or the price to his next of kin. This rule applies as forcibly to a railway company as to an individual. In my opinion it applies with even more force in a case like this. For when a railway company purchases property, nothing but a specific performance would answer the object of the company, and the legislature has taken care to ensure that object; whereas in many purchases it is indifferent to a purchaser whether he obtains the estate or damages. The remedy of a seller in a contract for a sale to a railway company ought to be co-extensive with the remedy of the company."

This case of *Eastern Counties R. Co. v. Hawkes* (*k*) is the only case in which specific performance of a contract, made by the projectors of a railway company for the purchase of lands, has been decreed *against* the company after the passing of the act. In that case it was granted, although the company declined to enter upon the lands, and in fact abandoned their undertaking altogether. The decision is therefore of great practical importance. This case was argued five times. Twice before Sir K. Bruce, V. C., who decreed specific performance of the contract, and overruled exceptions which had been taken to the Master's report on the title; thirdly, upon appeal against that decree, before Lord Truro, C., who resigned the seals before he delivered his judgment (*l*); fourthly, before Lord St. Leonards, C.; and lastly, before the House of Lords (*m*), when the judgment of the Vice-Chancellor was affirmed.

The agreement in question was under the corporate seal of a railway company, who were the promoters of a bill in Parliament, for a branch line from their railway to Spalding, with an extension to form a junction with the Ambergate Railway, and the company thereby agreed, conditionally on the bill passing, to purchase the whole of the plaintiff's lands, of part of which he was owner in fee-simple, and of the other part only tenant for life, and to obtain all necessary powers for enabling him to complete the purchase. One-third only of the plaintiff's land was within the limits of deviation, and directly affected by the bill in Parliament. The objects of the agreement

(*k*) 16 Jur. 1051; 7 Railw. C. 188; 22 L. J. (Ch.) 77; 3 De G. & Sm. 743; 1 De Gex, M. & Gord. 737. In *Bedford and Cambridge R. Co. v. Stanley*, 32 L. J. (Ch.) 60, Wood, V. C., would have granted specific performance *at the suit* of the company, if they had not taken proceedings to enforce their compulsory powers under sect. 85 et seq., ante, p. 158.

(*l*) The defendants declined to be bound by his judgment, which he was prepared to deliver after his resignation. See Railw. C. 219; 16 Jur. 1057.

(*m*) 5 H. L. C. 331. In this case it will be observed that the defendants filled the position of both promoters and incorporated company, and it is rather difficult to say in which character they were held liable.

were to induce the plaintiff to withdraw his opposition to the bill, and also to enable the company to form, independently of Parliament, by means of a diverging line passing through a part of his lands, not included in the deposited plans, a junction with the Ambergate Railway, in the event of the extension proposed by the company's bill being rejected by Parliament. There was nothing in the agreement or evidence to show that the plaintiff knew of the latter object of the company. The bill passed into an act, with a clause prohibiting the formation of the extension line, but giving the company power to purchase land, not exceeding thirty acres, for extraordinary purposes. The company afterwards abandoned the whole of the proposed undertaking, and declined to perform the contract, whereupon the plaintiff filed his bill, and was held entitled to specific performance, which could not be refused simply on the ground that an action might be maintained upon the contract.

In connection with the subject before us, we may remark, that if an agreement be made to withdraw opposition to a bill, in consideration that the company promoting it should make a branch line for the convenience of the petitioner against the bill, it seems that the company may afterwards apply to Parliament, for a bill authorizing the abandonment of the branch line. Lord Cottenham, C., refused to grant an injunction to restrain the application for such a bill, but evidently upon the ground that Parliament has the power of destroying, altering or affecting existing rights, but, nevertheless, always providing compensation to the party whose rights are sought to be affected (*o*). And the Court of Chancery will allow a guardian or other trustee to take steps for opposing the progress of a bill in Parliament, or to enter into negotiations with the promoters, if it is shown that the company propose to take lands in a manner which may be prejudicial to the owner, whose estates are under the care of the Court (*p*).

Parliament may release contracts.

Equity will authorize trustees to appear in Parliament.

If a contract contains any stipulation which is a condition precedent to the payment of the money by the company, it must be duly performed. Thus, where trustees of lands which were required by the managing committee of a projected railway company, for which a bill was pending in Parliament, agreed that in consideration of 11,700*l.* to be paid to the plaintiffs by the railway company, the railway should pass through the lands, and if the bill should pass in Parliament, the company should, within six months after the passing of the bill, pay to the plaintiffs the said purchase-money, and in con-

Conditions precedent.

(*o*) *Heathcote v. North Staffordshire R. Co.*, 2 Macn. & Gord. 109; 20 L. J. (Ch.) 82; acc. *McDonnell v. Grand Canal Co.*, 3 Ir. Ch. Rep. 578.

(*p*) *Davis v. Combermere*, 3 Railw. C. 506; *Monypenny v. Monypenny*, 4 Railw. C. 226.

sideration thereof should have conveyed to them nineteen acres of the land, the whole of the agreement to be null and void unless sanctioned by the Court of Chancery in a cause of *Laurence v. Porcher*, and so much of the agreement as the Court required should be inserted in the act, and the plaintiffs neglected to obtain the sanction of the Court of Chancery within the six months: it was held that they could not recover on the contract, because the obtaining the sanction of the Court of Chancery to the agreement within six months of the passing of the bill was a condition precedent to the payment of the money by the defendants (*q*).

2. *Powers to take and purchase Lands, by Agreements made after the Special Act is obtained.*

We are now arrived at the second branch of our inquiry, which relates to the purchase of lands by agreements entered into, *after* the special act has been obtained. In these cases it is not of course necessary to resort to the compulsory powers which the company may enforce. The authority of the company as to the taking of lands for the purposes of the railway is necessarily of a very extensive character. Large powers are contained in a single clause in the Railways Clauses Consolidation Act (*r*), which enacts that, subject to the provisions and restrictions in the acts (*s*), "it shall be lawful for the company, for the purpose of constructing the railway or the accommodation works connected therewith, to execute any of the following works; (that is to say),

"They may make or construct in, upon, across, under or over any lands, or any streets, hills, valleys, roads, railroads or tramroads, rivers, canals, brooks, streams, or other waters, within the lands described in the said plans, or mentioned in the said books of reference, or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences, as they think proper:

"They may alter the course of any rivers not navigable, brooks, streams or watercourses, and of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the

General powers
to construct the
railway and
works.

(*q*) *Porcher v. Gardner*, 8 C. B. 461; 19 L. J. (C. P.) 63.

(*r*) 8 & 9 Vict. c. 20, s. 16, post, App. See further on this point, post, Chap. VIII., Sect. 2.

(*s*) We have seen that plans and books of reference are deposited, ante, 13 et seq. See as to deviations and the cases relating thereto, post.

same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under, or by the side of the railway, as they may think proper:

General powers to construct the railway and works.

"They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway:

"They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences, as they think proper:

"They may from time to time alter, repair or discontinue the before-mentioned works, or any of them, and substitute others in their stead: and

"They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway:

"Provided always, that in the exercise of the powers the company shall do as little damage as can be, and shall make full satisfaction, as in the acts provided, to all parties interested, for all damage by them sustained by reason of the exercise of such powers."

By 8 & 9 Vict. c. 20, s. 45, "it shall be lawful for the company, in addition to the lands authorized to be compulsorily taken by them under the powers of the acts (*t*), to contract with any party willing to sell the same, for the purchase of any land adjoining or near to the railway, not exceeding in the whole the prescribed number of acres, for extraordinary purposes; (that is to say),

Lands may also be purchased for extraordinary purposes.

"For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, tollhouses, offices, warehouses and other buildings and conveniences:

"For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway" (*u*).

(*t*) When the legislature authorize a company to take lands specially described in their acts, it constitutes them judges whether they will or will not take those lands, provided they act with the bonâ fide object of using the lands for purposes authorized, and not for collateral purposes. *Stockton and Darlington R. Co. v. Brown*, 9 H. L. C. 246.

(*u*) 8 & 9 Vict. c. 20, s. 45, Appendix. See also 8 & 9 Vict. c. 18, sects. 12, 13 and 14, post, 171. And see also 26 & 27 Vict. c. 92, s. 8, post, Appendix, which authorizes the company to take additional land in case the Board of Trade certifies that the public safety requires them to do so.

If then the company can, without resorting to the compulsory powers, enter into voluntary agreements with the owners of any lands, messuages, tenements or hereditaments, which are required to be taken or used for the purposes of the railway, they are authorized to do so by the following provisions in the statutes.

Lands taken by agreement.

By 8 & 9 Vict. c. 18, s. 6 (App. 47), it is enacted that, subject to the provisions of that and the special act, it shall be lawful for the company to agree with the owners of any lands (*x*), by the special act authorized to be taken, and which shall be required for the purposes of such act, and with all parties having any estate or interests in such lands, or by that or the special act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands, of what kind soever (*y*).

Tenants in tail and other parties under disabilities may sell and convey lands.

And, as many persons are incapacitated from selling their lands, by reason of disabilities of various kinds, the statute proceeds to declare it to be lawful (*z*) for all parties being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the company, and to enter into all necessary agreements for that purpose, and particularly for all or any of the following parties, &c. (that is to say,) all corporations, tenants in tail or for life (*a*), married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest.

And this power so to sell, &c., may be exercised by all the before-mentioned parties, (other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest,) not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their

(*x*) See sect. 3, post, App. 46. Where a landowner agreed with a railway company to sell them some land, but died without giving the trustees under his will sufficient powers to complete the contract, whereby a suit in chancery was rendered necessary, it was held that each party must pay his own costs. *London and South Western R. Co. v. Bridger*, 12 Weekly Rep. 948.

(*y*) As to the construction of agreements

made between landowners and the company, see ante, 150, and *Manning v. Eastern Counties R. Co.*, 12 M. & W. 237, post.

(*z*) 8 & 9 Vict. c. 18, s. 7, post, Appendix. See *Governors of the Hospital of St. Thomas v. Charing Cross R. Co.*, 30 L. J. (Ch.) 395.

(*a*) An equitable tenant for life cannot convey under this section, but the trustees must join. *Lippincott v. Smith*, 29 L. J. (Ch.) 520.

wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power, under the authority of that or the special act, if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers, under the authority of that and the special act, if they had respectively been under no disability: (8 & 9 Vict. c. 18, s. 7, post, App. 47.)

Tenants in tail and other parties under disability may sell lands.

And persons entitled to lands absolutely may convey them in consideration of an annual rent-charge (*b*), (Sect. 10,) secured on the tolls or rates payable to the company, and recoverable, when in arrear, by action or distress: (Sect. 11.) The before-mentioned powers to sell and convey lands, given by sect. 7, extend to lands which the company may be authorized to take for extraordinary purposes (*c*): (Sect. 12.) And such lands may be sold by the company, and other lands in lieu thereof be purchased by them: (Sect. 13.) But such subsequent purchases cannot be made from persons under a legal disability to sell and convey the same: (Sect. 14.)

Powers extend to lands taken for extraordinary purposes.

Municipal corporations may not, except in certain cases, sell lands, unless with the consent of the Commissioners of her Majesty's Treasury: (Sect. 15.) Nor may the company construct any work on the sea-shore below high-water mark, or on any navigable river, without the consent of the Commissioners of Woods and Forests, and the Lord High Admiral. If such works are constructed, contrary to the provisions of the act, they may be abated at the cost of the company: (8 & 9 Vict. c. 20, s. 17, post, App.) The Railways Clauses Act, 1863 (*d*), also contains some further provisions for the protection of navigation.

Corporate lands.

Lands on the sea-shore, navigable rivers, &c.

With respect to mines lying under the railway, it is provided, that the company shall not be entitled to any mines of coal, ironstone, slate or other minerals (*e*), under any land purchased by them, (except only such part thereof as shall be necessary to be dug or carried away or used in the construction of the works,) unless the same shall have been expressly purchased, and such mines shall be deemed to be

Mines lying under railway.

(*b*) See also 23 & 24 Vict. c. 106, post, Appendix.

(*c*) The special act limits the quantity of land which may be taken for extraordinary purposes. See ante, 41. And, as to the uses which may be made of such lands, see 8 & 9 Vict. c. 20, s. 45, ante, 169.

(*d*) 26 & 27 Vict. c. 92, s. 13 et seq.

(*e*) Stone dug out of a quarry is a mineral, and mines are quarries or places where

anything is dug. *Earl of Rosse v. Wainman*, 14 M. & W. 859; 2 Exch. 800; *Micklethwait v. Winter*, 20 L. J. (Exch.) 313; 6 Exch. 644. In *Bowes v. Lord Ravensworth*, 15 C. B. 512, coke was held to be produce of a mine within the meaning of an inclosure act. See also, as to what are minerals, *Darvill v. Roper*, 3 Dr. 294; 24 L. J. (Ch.) 779.

excepted (*f*) out of the conveyances, unless expressly named therein: (8 & 9 Vict. c. 20, s. 77, post, App.)

Provisions for removal of incumbrances affecting the title of lands, and for protecting reversioners, &c.

It is also enacted that the power given by the acts (*g*) to enfranchise copyhold lands, &c., and to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any rent, charge, or incumbrance, shall extend to every party thereinbefore enabled to sell and convey, or release lands to the company (*h*).

Protection for reversioners, &c.

For the purpose however of preventing any loss to parties entitled in reversion or remainder, it is provided that the purchase-money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands, except under the provisions of the acts, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision contained in the act, be less than shall be determined by the valuation of two able practical surveyors, one nominated by the company, and the other by the other party (*i*); and if these surveyors cannot agree, then by a third surveyor, to be appointed by two justices, and the surveyors must annex to the valuation a declaration in writing of the correctness thereof; and all such purchase-money or compensation is to be deposited in the Bank of England, for the benefit of the parties interested, in manner thereafter mentioned (*k*).

Specific performance of contracts.

Contracts made under the foregoing powers should be under the seal of the company, and it is clear that they may then be enforced in equity, by a decree for specific performance, subject of course to the same rules, as we have already seen discussed, with reference to contracts made before the Special Act is obtained (*l*). If the agreement contains a stipulation that convenient communications shall be

(*f*) But the landowner cannot work them so as to injure the railway; see *Fletcher v. Great Western R. Co.*, 28 L. J. (Exch.) 147; 29 L. J. (Exch.) 253; *R. v. Aire and Calder Navigation*, 30 L. J. (Q. B.) 337; *Caledonian R. Co. v. Sprot*, 2 M'Q. 449; *Same Co. v. Colt*, 3 M'Q. 838; *North Eastern R. Co. v. Elliott*, 1 Hemm. & Johns. 145; 2 De G., F. & J. 423; 32 L. J. (Ch.) 402; *L. and N. W. R. Co. v. Ackroyd*, 31 L. J. (Ch.) 588. Nor can a landowner who has sold land to a railway company work minerals adjoining the railway, so as to injure it, as the company are entitled to vertical and lateral support of adjoining land. *North Eastern R. Co. v. Crossland*, 32 L. J. (Ch.) 353. As to compensation to owners of mines, desirous of working them, see sect. 78, and post, 212.

(*g*) See post, Chap. VII. Sect. 4, "On the Title and Conveyance of Lands."

(*h*) 9 & 9 Vict. c. 18, s. 8, App. 47.

(*i*) Nomination of surveyors under this section is not necessary to make the contract valid. If a price is agreed on the Court will satisfy itself as to the sufficiency of the price. *Baker v. Metropolitan R. Co.*, 31 Beav. 504; 32 L. J. (Ch.) 7. See also *Tillett v. Charing Cross R. Co.*, 26 Beav. 419.

(*k*) 8 & 9 Vict. c. 18, s. 9, App. 47.

(*l*) Ante, 162; *Walker v. Eastern Counties R. Co.*, 6 Hare, 594; 5 Railw. C. 469; but see *Haynes v. Haynes*, 30 L. J. (Ch.) 578; 1 Dr. & Sm. 426, where Kindersley, V.C., elaborately reviewed all the cases bearing on this question, and came to the conclusion that *Walker v. Eastern Counties R. Co.*, cannot be maintained. It has, however, been followed in Ireland, *Smith v. Dublin and Bray R. Co.*, 3 Ir. Ch. Rep. 225, where specific performance was granted against the company.

made with adjoining lands, or other similar provisions, the Master will be directed to institute an inquiry on these points (*m*). But if the agreement provides that the price or compensation shall be settled by an arbitrator or otherwise, then it seems that a suit for specific performance cannot be maintained until the amount is settled and ascertained (*n*). Thus, where the first and second tenants for life of lands entered into a contract with a railway company to sell them lands at a price to be fixed by arbitration or a jury, and the company entered into possession, and paid a sum of money into the Bank, and the first tenant for life died, before the amount of the purchase-money was ascertained, or the means of ascertaining it appointed, it was decided that no decree for specific performance of the contract would lie against the company (*o*). But where notice to take land is followed by an award of purchase and compensation money, Courts of Equity have jurisdiction upon bill filed by the landowner to compel the company to complete the purchase (*p*).

Construction of contracts.

And where the lessees of premises, occupied by them as a ropery, agreed to withdraw their opposition to a bill in Parliament for a railway, which would intersect their premises, and the agreement, among other stipulations, provided that the railway should be so constructed as that, when finished, the level of the ropery should not be altered, nor the surface of the ropery be in the least respect diminished, and the parties afterwards disagreed as to the meaning of the agreement, Lord Truro, C., decided that the company were bound to restore the surface, so as to make it available for all practical purposes, and not as a ropery only. There was nothing to show that the future application of the land was to be confined to that of a ropery; and there was nothing in the agreement to qualify its plain meaning, or to restrain its operation to the plaintiff's tenancy (*q*).

3. *Power to take and purchase Lands under the compulsory Powers in the Act.*

What Houses and Land may be taken.—The same general powers to take lands, which we have mentioned in the last section, apply to cases wherein the company intend to purchase and take them under

(*m*) *Sanderson v. Cockermouth and Workington R. Co.*, 2 H. & T. 327; 19 L. J. (Ch.) 503. See also *Lytton v. Great Northern R. Co.*, 2 K. & J. 394.

(*n*) *Milnes v. Gery*, 14 Ves. 400; *Adams v. London and Blackwall R. Co.*, 2 Macn. & Gord. 118; 19 L. J. (Ch.) 557. Where a company delayed to take possession for two years, a suit for immediate specific performance was dismissed. *Rodington v. Great Western R. Co.*, 13 Jur. 144.

(*o*) *Morgan v. Milman*, 17 Jur. 193 (Ch.) 134; 3 De Gex, M. & Gord. 24, affirming the decision of Turner, V. C., 16 Jur. 755 (Ch.); 10 Hare, 279.

(*p*) *Mason v. Stokes Bay Pier and R. Co.*, 32 L. J. (Ch.) 110; 11 Weekly Rep. 80, approving *Regent's Canal Co. v. Ware*, 23 Beav. 575.

(*q*) *Harby v. East and West India Dock Co.*, 1 De Gex, M. & Gord. 293.

their compulsory powers, except that lands taken for extraordinary purposes under sect. 45 (ante, 169), if they happen to be beyond the limits of deviation, can only be taken by agreement.

We shall hereafter consider in detail what lands may be taken for the purposes of the railway and works, and especially with regard to the power of the company to make deviations from the line laid down on the parliamentary plans, but it may be convenient to refer, in this place, to some clauses in the acts, which are of importance.

Part only of a house or manufactory cannot be taken.

8 & 9 Vict. c. 18, s. 92.

And first, it is enacted by sect. 92, "that no party shall at any time be required to sell or convey to the company, a part only of any house or other building or manufactory (*r*), if such party be willing and able to sell and convey the whole thereof" (*s*).

This section applies, although the landowner may have only a leasehold interest (*t*).

Dakin v. L. & N. W. R. Co.

Questions have however arisen as to what description of premises fall within the above definition of "a part only of any house or other building or manufactory." In *Dakin v. L. and N. W. R. Co.* (*u*), Wigram, V. C., required a company to take a dwelling-house and the entire premises, where they proposed to take only a privy situate at the end of a garden used with the dwelling-house. In another case (*x*), where the land proposed to be taken by a company was a

(*r*) In *Gibson v. Hammersmith R. Co.*, 32 L. J. (Ch.) 337, Kindersley, V. C., held that "manufactory" meant a building as it stood, with engines, &c., fixed to it, and not merely bricks and mortar; and see *ibid.* as to fixtures generally. Whatever the company are bound to take under sect. 92, must be taken into account and valued if they proceed under sect. 85.—*Ibid.* See also *Pulling v. London, Chatham and Dover R. Co.*, post, p. 176.

(*s*) 8 & 9 Vict. c. 18, s. 92, App. 62. In a case where the special act contained some provisions as to how communications should be made on lands forming part of a manufactory, Sir G. Turner, V. C., decided that sect. 92 could not be considered as being incorporated with the special act; *Sparrow v. Oxford and Wolverhampton R. Co.*, 9 Hare, 436; but, on appeal, the Lords Justices reversed that decision; *S. C.*, 2 De Gex, M. & Gord. 94. See also *Pinchin v. London and Blackwall R. Co.* 1 K. & J. 36; 5 De Gex, M. & Gord. 831.

(*t*) *Pulling v. London, Chatham and Dover R. Co.*, 33 L. J. (Ch.) 505, post, p. 176.

(*u*) 3 De G. & S. 420. See 26 L. J. (Ch.) 734, note.

(*x*) *Sparrow v. Oxford and Wolverhampton R. Co.*, 2 De Gex, M. & Gord. 94; 21 L. J. (Ch.) 731. See also Sir K. Bruce's, V. C., observations in *Barker v. North Staffordshire R. Co.*, 5 Railw. C. 411, and those of Lord Cottenham, C., 5 Railw. C. 419. Whether a company passing under a house or manufactory, by means of a tunnel, may

be compelled to take the whole of the premises, was the subject of discussion in a case where Lord Cranworth, L. J., said on this subject, "The only remaining point is, that although the company have given a notice, in the ordinary way, that they mean to take the land, they are now entitled, if they cannot take the land, to burrow under it, by making a tunnel, which they say they are able and willing to do, without taking or touching any part of the surface. A great number of arguments in support of this view were urged upon us. It was said, Suppose the manufactory was at the top of a hill, and you were burrowing under it at the distance of 1000 feet, are you then taking part of the manufactory? I do not feel myself called upon to answer that question: but if I were, I should incline to the opinion that you are, on the principle of the maxim, '*Cujus est solum ejus est usque ad inferos.*' Can it be said, that if you were an inch below the surface, you would not take a part of the manufactory? I am inclined to think that, however deep the tunnel was made, it would be within the enactment.

"I do not, however, think that question arises, because here is a notice to take the land, and upon that notice the company were proceeding to take it in the ordinary way. That is virtually what was contemplated when the notice was given." *Sparrow v. Oxford and Wolverhampton R. Co.*, ubi supra. See also as to tunnels, *Ramsden v. Manchester R. Co.*, 1 Exch. 723;

strip of land, within the walls of premises which were used as an iron and tin plate manufactory, and over which strip a person had a right of way, but it had been the practice to use the strip as a place of deposit for rubbish and the scoria which came from the furnaces, it was ruled by Lord Cranworth and Sir K. Bruce, L. Js., that the strip proposed to be taken constituted a part of the manufactory, and that the company must therefore take the whole of the premises.

Part only of a house, &c. cannot be taken.

In another case (*y*), the trustees of some intended almshouses contracted to buy an acre of land, and to build almshouses on a particular plan, and add wings when they had funds. Before they built any part, a railway company gave them notice of their intention to apply to Parliament for an act. The centre was built, and then the company gave notice of their intention to take part of the land on which one of the wings would be built according to the plan. The trustees had no funds to build wings; but filed a bill against the company for an injunction to restrain them from taking the land unless they took the whole. The line of railway would not come within some few inches of the building already erected. It was held by the Lords Justices, reversing a decision of Wood, V. C., that although the company did not propose to touch the actual building, they would be taking part of a house, and must be restrained. And Knight Bruce, L. J., said—

Grosvenor v. Hampstead Junction R. Co.

“The singular manner in which the 92nd section is worded has certainly given rise to various questions as to the true meaning of the word ‘house’ contained in that section: whether it is or is not to be considered as used in a more limited sense than that in which the law generally, if not universally, understands it. But I thought that all such questions had been long set at rest, and that for the sake of general convenience, and for the sake of ordinary justice to private proprietors, the word ‘house’ in that section was to be read in its ordinary and legal sense.”

In another case (*z*), three houses were built upon a plot of land, a portion of which was laid out in gardens for each house: a summer-house and other detached outhouses were also built. The company required a portion for the purpose of their undertaking, but refused to purchase the whole. It was held, however, by the M. R., upon a bill by the freeholder, that the gardens were part of the houses to which they were attached, and that the company was bound to purchase the two houses and premises from which parts of the gardens

Cole v. West London & Crystal Palace R. Co.

and as to damage caused by the vibration of trains passing through them, *Croft v. L. and N. W. R. Co.*, 32 L. J. (Q. B.) 113; 3 Best & S. 436. See also *Piper v. Hammer-smith and City R. Co.*, Q. B. M. T. 1864, as to injury to houses by vibration caused by passing trains.

(*y*) *Grosvenor v. Hampstead Junction R. Co.*, 26 L. J. (Ch.) 731; 1 De G. & J. 446. See also *Chambers v. London, Chatham and*

Dover R. Co., 8 L. T. (N. S.) 235. In *Binney v. Hammersmith R. Co.*, 8 L. T. (N. S.) 161, the company were held bound by a verbal agreement of their surveyor to take the whole site of a house.

(*z*) *Cole v. West London and Crystal Palace R. Co.*, 28 L. J. (Ch.) 767; 27 Beav. 242. See also *King v. Wycombe R. Co.*, 29 L. J. (Ch.) 462; 28 Beav. 104, acc.

*St. Thomas's
Hospital v.
Charing Cross
R. Co.*

were taken, and to make compensation for any injury sustained in respect of the third house. Upon similar principles it was held (a), that where the governors of an ancient hospital had purchased additional land, on part of which a new wing had been built, and the rest was laid out as a garden for the use of the entire hospital, a railway company was not entitled to take any part of the newly acquired premises without purchasing the whole hospital.

What is not "part
of a house."

But in the following case it was held that a strip of land held for pleasure only, and on the other side of a road, was not "part of a house" within the meaning of sect. 92 (b).

*Fergusson v.
London, Brighton,
&c. R. Co.*

F. was lessee of a house and garden, and of a strip of meadow land separated therefrom by a road originally made for the convenience of himself and the lessees of the adjoining houses, but which road was afterwards thrown open to the public. Each of the other lessees had also a strip of land on the other side of the road. The leases contained covenants restraining the lessees from building on the strips, and the strips were by arrangement all thrown into one piece, and were used by F. and the other lessees in common as cricket and pleasure ground, the whole being also let to a butcher for grazing purposes. A railway company required this piece of land for the construction of their line. F. insisted that the company, if they took the land, must also take his house and garden, and on their proceeding to obtain possession under the Lands Clauses Act, filed his bill for an injunction. But the Master of the Rolls refused it, considering it doubtful whether the strip of meadow land was "part of a house." On appeal the decree was affirmed by Lord Justice Turner, although Lord Justice Knight Bruce dissented.

*Pulling v. Lon-
don, Chatham and
Dover R. Co.*

And a field separated from the garden of a house by a ha-ha, traversed by a gravel walk leading to a coachman's house at the further end thereof, and used occasionally for purposes of pleasure (archery and dancing), though chiefly as pasture for cows, was held by Turner, L. J., (dubitante K. Bruce, L. J.,) *not* to be part of the house within sect. 92 (c).

And it is to be observed that a landowner, part of whose house (within sect. 92) is taken, cannot under that section compel the company to take any portion beyond what it requires, *less* than the whole (c).

(a) *St. Thomas's Hospital v. Charing Cross R. Co.*, 1 Jo. & H. 400; S. C., 30 L. J. (Ch.) 395. See also *Giles v. London, Chatham and Dover R. Co.*, *ibid.* 603; 1 Dr. & Sm. 406; where a company, having given notice that they should require part of a workshop, were compelled to take the whole premises, and could not take possession of part on paying into Court the value of part under sect. 85. In *Alexander v. West End of London and Crystal Palace R. Co.*, 31 L. J.

(Ch.) 500, it was held that the company could not take part of intended gardens of unfinished houses, without taking the whole land intended for gardens and the houses. See also *Reddin v. Metropolitan Board of Works*, 31 L. J. (Ch.) 660.

(b) *Fergusson v. London, Brighton and South Coast R. Co.*, 33 L. J. (Ch.) 29; 8 L. T. (N. S.) 718; 9 L. T. (N. S.) 134.

(c) *Pulling v. London, Chatham and Dover R. Co.*, 33 L. J. (Ch.) 505.

Where a railway company gives notice to treat for *part* of any premises, a landowner does not, by negotiating for sale of *part*, preclude himself from afterwards insisting on his right to compel the company to take the *whole* under sect. 92; and when once he has given his notice in reasonable time, the company cannot take possession (*e*).

If the company proceed to treat for a part only of a house, building or manufactory, in contravention of sect. 92, the owner or party interested should give the company notice that he requires them to take the whole, but he may not apply for a mandamus to compel them to do so, because in that case the company may abandon their intention, and refuse to take any part of the premises. Thus, where the owner of a manufactory, who had received a notice from the company of their intention to take a part of his premises, obtained a writ of mandamus to compel them to take the whole, the Court of Queen's Bench, on demurrer, decided that, although the 92nd section protected the owner from being obliged to sell part, it does not contain any words making it obligatory on the company, who only want a part, to take the whole; and, therefore, that the writ, which was founded entirely on such a supposed obligation on the part of the company, could not be sustained. In the same case, it was contended for the applicant, that the mandamus might go, as to that part only of the land in respect of which the notice had been given by the company; but the court refused to assent to this argument, and quashed the writ generally (*f*).

A mandamus does not lie to compel the company to take the whole.

R. v. London and South-Western R. Co.

It may be convenient in this place to mention that, in a case (*g*) in which a railway act (*before the Lands Clauses Act*) contained a clause, that if the owner of any house, manufactory, ground or building which should be situate within fifty feet of the railway should give notice to the company to purchase his interest in such house, &c., the company should treat for the purchase of his interest in the house, &c., mentioned in such notice: it was held, that the owner of a principal dwelling-house and garden within fifty feet of the railway, who was also the owner of a vinegar manufactory, brewery and five smaller dwelling-houses immediately adjoining the same, but more than fifty feet from the railway, could not require the company to purchase any other portion of the premises beyond the principal dwelling-house and garden. But in another case (*h*), in which a railway act (*also before the Lands Clauses Act*) required the company

R. v. London and Greenwich R. Co.

Walker v. London and Blackwall R. Co.

(*e*) *Gardner v. Charing Cross R. Co.*, 31 L. J. (Ch.) 181; S. C., 2 Johns. & H. 246. See also *Gibson v. Hammersmith R. Co.*, 32 L. J. (Ch.) 337.

(*f*) *R. v. London and South-Western R. Co.*, 5 Railw. C. 669; 17 L. J. (Q. B.) 326; 12 Q. B. 775. And see *King v. Wycombe*

R. Co., 29 L. J. (Ch.) 462, that the company may abandon their notice.

(*g*) *R. v. London and Greenwich R. Co.*, 3 Q. B. 166; 3 Railw. C. 138.

(*h*) *Walker v. London and Blackwall R. Co.*, 3 Q. B. 744; 3 G. & D. 549; 12 L. J. (Q. B.) 88.

to purchase any house situate within fifty feet of the railway, if the same should be deteriorated by the railway, it was held, that the company was bound to purchase a house of which a very large proportion, and not the entirety, was within fifty feet of the railway.

Intersected lands.

The Lands Clauses Act also contains the following provisions with respect to small portions of intersected land (*j*).

Owners may require a company to purchase small portions of intersected land.

8 & 9 Vict. c. 18, s. 93.

By sect. 93, if any lands, not situate in a town (*i*), or built upon, shall be so cut through and divided by the works as to leave, either on both sides, or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same, along with the other land required for the purposes of the special act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left, into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites, and by soiling the same in a sufficient and workmanlike manner.

Sect. 94.

By sect. 94, if any *such* (*k*) land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided, as the promoters of the undertaking are, under the provisions of this or the special act, or any act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters

(*i*) Where the trustees of a turnpike road were by an act restricted from placing a turnpike gate across the roads in the town of T., it was held that the judge properly defined to the jury the meaning of the word "town" in the act, by directing them to consider whether the turnpike gate was within the town; that is to say, "whether the place on which it stood was so surrounded by houses, that the inhabitants on either side might be fairly said, in a popular sense, to dwell together, and with the inhabitants of T." *R. v. Cottle*, 15 Jur. 721 (Q. B.); 20 L. J. (M. C.) 162; 16 Q. B. 412. On the trial of an issue whether a railway was passing through a "town" within the meaning of the Railways Clauses Act (8 & 9 Vict. c. 20, s. 11), the judge at Nisi Prius merely told the jury that the word "town" was to be understood in its ordinary and popular sense; but this was held to be a misdirection, inasmuch as such a definition of the

meaning of the word "town" should have been given as would have enabled the jury to decide the issue. The Court of Exchequer suggested that the word "town" in that act means a collection of inhabited houses so near to each other, that they may reasonably be said to be continuous, and the term would include a space of open ground surrounded by continuous houses, and also open spaces occupied as mere accessories to such houses, although not so surrounded. *Elliott v. South Devon R. Co.*, 2 Exch. 725; 17 L. J. (Exch.) 262.

(*j*) 8 & 9 Vict. c. 18, s. 93, App. 62.

(*k*) These words refer to intersected land generally, as mentioned in the heading to sect. 93, *Falls v. Belfast and Ballymena R. Co.*, 12 Ir L. R. 233, and are not confined to land situate in a town. *Eastern Counties, &c., R. Co. v. Marriage*, 9 H. L. C. 32; 31 L. J. (Exch.) 73, overruling the judgment in the Exch. Ch., 27 L. J. (Exch.) 185; 2 H. & N. 649.

of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party (*l*), ascertain by their verdict or award, the value of any such severed piece of land, and also what would be the expense of making such communication.

Intersected lands.

When compulsory powers commence and expire.—We may now proceed to state that the compulsory powers contained in the acts cannot be put in force, unless the whole of the estimated capital of the company has been subscribed by them under a contract (*m*), and a certificate from two justices, that the whole of the capital has been so subscribed, is sufficient evidence thereof (*n*); and, further, the powers for the compulsory purchase or taking of lands for the purposes of the special act may not be exercised after the prescribed period (*o*); and if no period be prescribed, not after the expiration of three years from the passing of the special act (*p*). The compulsory powers must, of course, be exercised for the sole purpose of constructing the railway (*q*).

Capital must be subscribed.

Compulsory powers cannot be exercised after a period prescribed.

An important point has been raised, as to the effect of this section, in cases where the company have given a notice that lands are required, and the owner, *before* the expiration of the prescribed period, duly intimated his desire that a jury should be summoned, but the company having taken no further steps, the question was, whether a writ of mandamus would lie, *after* the prescribed period had elapsed,

(*l*) See post, 186.

(*m*) 8 & 9 Vict. c. 18, s. 16, post, App. 48.

(*n*) Ibid. s. 17, post, App. 49. See the form of this Certificate, App. tit. *Forms*. This section does not apply to a branch railway authorized to be made by an already existing company. *R. v. Great Western R. Co.*, 1 E. & B. 253; *Weld v. South-Western R. Co.*, 33 L. J. (Ch.) 142; 32 Beav. 340.

(*o*) This is a disabling and not an enabling clause, and a contract for the purchase of land must be completed in a reasonable time. *Baker v. Metropolitan R. Co.*, 32 L. J. (Exch.) 7.

(*p*) 8 & 9 Vict. c. 18, s. 123, post, App. By 5 & 6 Vict. c. 55, s. 15, post, App. 13, additional land may be taken after the expiration of the prescribed period, for the purpose of giving increased width to the embankments and inclination to the slopes of railways, or for making approaches to bridges or archways, or doing certain works therein described for the repair or pre-

vention of accidents. On the certificate of the Board of Trade that the public safety require additional land for the above purposes, the compulsory powers of purchasing and taking the lands mentioned in the certificate are revived for such further period as shall be therein mentioned. See also 26 & 27 Vict. c. 92, s. 8, post, Appendix, as to additional land where Board of Trade requires a bridge to be substituted for a level crossing. Where a canal act did not limit any time within which the works were to be completed, and the works were carried to a certain point in 1816, and in 1835 were proceeded with, and under the powers in the act the canal company destroyed the plaintiffs' railway; it was held that the company had authority to proceed though so long a period had elapsed. *Thicknesse v. Lancaster Canal Co.*, 4 M. & W. 472.

(*q*) *Dodd v. Salisbury and Yeovil R. Co.*, 1 Giff. 158.

It is sufficient if notice be given that the lands are required before the expiration of the period prescribed.

to compel the company to proceed to summon a jury. This question was decided in the affirmative in *R. v. Birmingham and Oxford Junction R. Co.* (r), where it is said that the limitation does not apply against a landholder in such a case, because a notice to treat is an inchoate purchase, and after that has been given in due time, it is competent for the landowner to compel the completion of the purchase. So where a company had taken possession of lands, under the 85th section of the Lands Clauses Act, before the expiration of the prescribed period, having complied with all the requisites, by paying the proper sum of money into the Bank of England, and giving a bond, but the company took no further steps to ascertain the amount to be paid by them as compensation, or to clothe themselves with the legal title, and all parties remained inactive until the time limited for exercising the compulsory powers had expired,—it was held that, the company having rightfully entered upon the lands before the expiration of the prescribed period, an ejectment could not be maintained against them after that period (s). And it has also been decided, that if the company give a notice that the lands are required, and afterwards, even a day before the compulsory powers expire, give a bond and deposit money in pursuance of the 85th section, neither their powers to purchase, nor their powers to enter upon the lands, are gone by the effluxion of the prescribed period (t). These cases appear to have been decided upon the principle that as soon as the company have given a notice to take land, they have exercised their powers of compulsory purchase, and that all the subsequent steps are not an exercise of the powers of compulsory purchase, but of powers which are intended to carry that purchase into effect (u).

The company are to give notice that they are willing to treat for the purchase of lands, and as to compensation. Sect. 18.

The Notice to Treat.—Having thus shown what lands may be taken, and when the compulsory powers may be exercised, we arrive at sect. 18, which enacts, “that when the company shall require to purchase or take any of the lands which by the acts they are authorized to purchase or take, they shall give notice (x) thereof to all the

(r) 19 L. J. (Q. B.) 453, affirmed in error, *Birmingham and Oxford R. Co. v. R.*, 15 Q. B. 634; 20 L. J. (Q. B.) 304; *Edinburgh and Glasgow R. Co. v. Monklands R. Co.*, 12 Court of Session Cases (2nd series), 1306.

(s) *Doe d. Armistead v. North Staffordshire R. Co.*, 20 L. J. (Q. B.) 249; 16 Q. B. 526; *Worsley v. South Devon R. Co.*, 20 L. J. (Q. B.) 254; 16 Q. B. 539.

(t) *Marquis of Salisbury v. Great Northern R. Co.*, 21 L. J. (Q. B.) 185; 16 Jur. 740; 17 Q. B. 840.

(u) *Sparrow v. Oxford and Worcester R. Co.*, 9 Hare, 436.

(x) These notices, to be given to all par-

ties interested in or entitled to sell the lands, may be served personally on such parties, or left at their last usual place of abode, if any such can, after diligent inquiry, be found; and if they are absent from the United Kingdom, or cannot be found after diligent inquiry, the notices must also be left with the occupier of the lands, or if there be no occupier, affixed upon some conspicuous part of the lands, 8 & 9 Vict. c. 18, s. 19, post, App. 49. If the party be a corporation aggregate, the notice must be left at the principal office of business, or if there be no office, upon some principal member of the corporation, and

parties interested in such lands, or to the parties enabled by the acts to sell and convey or release the same (*y*), or such of the said parties as shall, after diligent inquiry, be known to the company, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the company are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works" (*z*).

8 & 9 Vict. c. 18, s. 18.

By sect. 21, "If, for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the company shall not agree as to the amount of the compensation to be paid by the company for the interest in such lands belonging to such party, or which he is by the acts enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner thereafter provided for settling cases of disputed compensation" (*a*).

If parties fail to treat or do not agree with company, the compensation to be settled as after mentioned. Sect. 21.

The notice to treat should state accurately the quantities and situation of the lands required for the railway works; and, for greater security, a plan is generally annexed to the notice (*b*), or reference is made to the parliamentary plan deposited at a specified place (*c*). If any mistake is made on the face of the plan, the company will be unable to enter on any lands which may be omitted (*d*).

Notice to treat.

A notice to treat, when given, cannot be revoked; there is no *locus pœnitentiæ* (*e*); for to a certain extent and for certain purposes the relative situations of vendor and purchaser are created by giving the notice (*f*). Where notice to treat was given to an imbecile, and he

Effect of notice.

also be left with the occupier of the lands; or, if there be no occupier, be in like manner affixed upon the lands. Ibid. sect. 20, post, App. The notices should be signed in the manner prescribed by 8 & 9 Vict. c. 16, s. 139, post, App. 41, which enacts, "that every summons, notice, or other document requiring authentication by the company, may be signed by two directors, or by the treasurer, or the secretary of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print." By conforming to these directions, all technical objections to the sufficiency of the signatures to such notices will be avoided.

amount of disputed compensation is the subject of the next Chapter.

(*b*) *Sims v. Commercial R. Co.*, 4 My. & C. 124; 1 Railw. C. 431.

(*c*) See the form, post, App. tit. *Forms*.

(*d*) See *Kemp v. London and Brighton R. Co.*, 1 Railw. C. 495.

(*e*) *R. v. Hungerford Market Co.*, 4 B. & Ad. 327.

(*f*) See *Haynes v. Haynes*, 30 L. J. (Ch.) 578; 1 Dr. & Sm. 426, where Kindersley, V. C., after an elaborate review of all the authorities, decided that a notice to treat did not operate an equitable conversion of freehold into personalty, and considered that it would not entitle the company to specific performance. See also Sugd. V. & P., 14th ed., 80. In *Smith v. Dublin and Bray R. Co.*, 3 Ir. Ch. Rep. 225, specific performance was granted against the company. See further *R. v. Commissioners of Manchester*, 4 B. & Ad. 332, n.; *Doo v.*

(*y*) Ante, p. 170.

(*z*) 8 & 9 Vict. c. 18, s. 18, post, App. 49. See forms of Notices, post, App. tit. *Forms*.

(*a*) 8 & 9 Vict. c. 18, s. 21, post, App. The mode of proceeding to ascertain the

Effect of notice to treat.

When lands are taken for public purposes.

R. v. Commissioners of Woods and Forests.

died before the purchase-money was assessed, it was held that there was no conversion of the land into money (*g*). But where the purchase and compensation money are fixed, Courts of Equity will treat the conversion of the land into money as complete (*h*), and a suit for specific performance may be maintained (*i*). Where, however, there is great delay in proceeding on such notices they will be considered as abandoned (*k*); as, whatever may have been the case formerly, the modern rule of equity requires parties to be prompt in seeking the assistance of the Court on bills for specific performance (*l*). Where a notice was given which stated that the company would require twenty perches of land, and before anything further was done on either side, they gave notice of withdrawal of that notice, and that only one perch of land was required, it was ruled that the last notice was a nullity (*m*). And it is no answer to say that they have no funds (*n*). There is, however, an exception to this rule, in the case of notices given by commissioners for public works. Where the defendants, who were authorized to purchase lands for forming a royal park, gave notice under the provisions of the act that certain lands would be required, it was held to be a good return to a mandamus requiring the commissioners to summon a jury to assess the value of the lands, to show that the undertaking had been abandoned for want of funds. This decision is valuable, as showing the stringency of the rule laid down in the text, in cases where private companies have given such notices. Patteson, J., says,—

“If this were the case of a railway or other private company, no doubt the return would be insufficient, because notice having been given that the lands were required, and a claim sent in accordingly, a contract is entered into, and the parties stand in the relation of vendor and purchaser. If the company had not the means of paying for the lands, they should have abstained from giving notice to the owner. But a private company, to whom an act is granted for their profit, differs materially from commissioners appointed under a public act, to do on behalf of the executive government certain things for the benefit of the public; and the principle that imposes liabilities upon a private company, as arising in consideration of the statute granted to them, has no application in the case of such public commissioners. There

London and Croydon R. Co., 1 Railw. C. 257; *Edinburgh and Glasgow R. Co. v. Monklands R. Co.*, 12 Court of Session C. (2nd series) 1306; *Sparrow v. Oxford and Wolverhampton R. Co.*, 21 L. J. (Ch.) 731; *Marquis of Salisbury v. Great Northern R. Co.*, 21 L. J. (Q. B.) 185; 17 Q. B. 840; *Burkenshaw v. Birmingham and Oxford Junction R. Co.*, 5 Exch. 475; *Edinburgh and Dundee R. Co. v. Leven*, 1 M'Q. 284; *Stone v. Commercial R. Co.*, 1 Railw. C. 375; 4 Myl. & Cr. 122. See also *Inge v. Birmingham, Wolverhampton and Stour Valley R. Co.*, 1 Sm. & G. 347; 3 De Gex, M. & Gord. 658; *Pinchin v. London and Blackwall R. Co.*, 1 K. & J. 36; 5 De Gex, M. & Gord. 831. When a variance will not bar the claimant, see *Walker v.*

Same, 3 Q. B. 744.

(*g*) *Midland R. Co. v. Oswin*, 3 Railw. C. 497.

(*h*) *Re Wootton*, 1 New Rep. 193.

(*i*) *Regent's Canal Co. v. Ware*, 23 Beav. 575; 26 L. J. (Ch.) 566; *Mason v. Stokes Bay Pier and R. Co.*, 32 L. J. (Ch.) 110.

(*k*) *Hedges v. Metropolitan R. Co.*, 28 Beav. 109.

(*l*) *Southcomb v. Bishop of Exeter*, 6 Hare, 213.

(*m*) *Tawney v. Lynn and Ely R. Co.*, 16 L. J. (Ch.) 282; 4 Railw. C. 615.

(*n*) *R. v. Commissioners of Manchester*, 4 B. & Ad. 332, n.; *R. v. York and North Midland R. Co.*, 1 E. & B. 178, 858; *R. v. Ambergate, &c. R. Co.*, 1 E. & B. 372.

may be reason for holding a notice to treat for a purchase, when given by a private company, which has the option of taking land, to be a declaration of their option to take, and a contract of purchase, of which this Court will compel specific performance, making the obligation on such a company reciprocal with the obligation on the landowner. But in the case of commissioners for the public, having a limited power of taking land, provided that the required quantity can be obtained for a given sum, a notice to treat for the purchase should be construed to be that which it is; the commissioners cannot ascertain whether the land can be obtained for a price, unless they treat for a purchase. There is a duty under the statute to open the treaty; but it would defeat the intention of the legislature, if the opening of a treaty was held to be the completion of the contract (o).

The notice to treat.

But it is now well settled that the powers of the company are not exhausted when they have given one notice; but they may issue a second, and require additional lands. In an early case (p) Lord Cottenham, C., said,—

Further notices may be given that additional lands are required.

“That the statute had not expressly laid down any rule on this point, but simply that the company were to give notice of what land they required; in other words, that they cannot take any land without notice. Here, however, it is contended that the company are bound to determine, once for all, what quantity of land they will require, and that where they have taken a certain quantity under one notice, they cannot afterwards, if they find it insufficient, come for more. I am of opinion that nothing could be more inconvenient than to lay down such a rule. The company are naturally desirous of taking as little land as is necessary for their undertaking. But a thousand unforeseen circumstances may occur in the progress of their works, which may make it necessary for them to have more land than they originally calculated on. And, until the works are complete, they cannot be certain whether they may or may not require more land than they at first gave notice for. Of this the case now under consideration is one instance, that of *Webb v. Manchester and Leeds R. Co.* (q) is another; and it is plain that the effect of laying down such a rule would be either to compel these companies in all cases to take more land than they will probably want, or, if they happen to give notice originally for less than they eventually require, to put them at the mercy of the landholder; while, on the other hand, the inconvenience to the landowner from the contrary rule is comparatively trifling. This construction of the act is more consistent than the other with what may be presumed to have been the intention of the legislature; for it is that which the interest of these companies requires, and which does not expose landowners to anything like the inconvenience to which the contrary construction would subject the companies. I think the act is not only capable of such a construction, but that it is the right and proper one” (r).

Stamps v. Birmingham and Stour Valley R. Co.

So where a company having opened the main line of the railway for traffic, but not having completed the stations and works, took compulsory proceedings, within the prescribed period, to obtain certain lands near the station, within the limits of deviation, for the purpose of laying down a branch railway to communicate with a river, it was ruled that the defendants were authorized, under the

(o) *R. v. Commissioners of Woods and Forests*, 19 L. J. (Q. B.) 497; 15 Q. B. 761.

(q) 1 Railw. C. 576.

(p) *Stamps v. Birmingham and Stour Valley R. Co.*, 7 Hare, 251; 17 L. J. (Ch.) 431; 6 Railw. C. 123.

(r) *Simpson v. Lancaster and Carlisle R. Co.*, 15 Sim. 508; 4 Railw. C. 625; *Williams v. South Wales R. Co.*, 3 De G. & S. 354; 13 Jur. 443.

The notice to treat.

16th section, to take these lands, inasmuch as they had not exhausted all the powers given them by the act, and had not finished all their works (*s*).

When lands are in the possession of a receiver or committee of lunatics.

If the lands required by the company are in the possession of a receiver, or of the committee of a lunatic appointed by the Court of Chancery, the company should make a special application to the Court, for if they proceed, without the sanction of the Court, to enforce the statutory compulsory powers, an injunction may be obtained to restrain their proceedings (*t*).

Waiver of notice to treat by conduct of party interested.

The issuing of the notice to treat is the foundation of the right of the company to proceed to assess the compensation (*u*); but if a party interested in lands enter into negotiations with the company, and agree to waive the necessary notice to treat, he is afterwards estopped from taking the objection that he never received a notice (*x*); and, on the same principle, it was decided that the company, after appearing before a jury, cannot object to an inquisition, on the ground that it did not disclose that a notice to treat had been duly served (*y*).

Notice of claim;

The Notice of Claim.—When the party claiming any estate or interest in the lands proposed to be taken has received notice from the company requiring him to treat, he must, without loss of time, determine on the course which he will pursue. He may, within twenty-one days, as mentioned in sect. 21 (ante, 181), state the particulars of his claim, and endeavour to treat with the company as to the amount of compensation to be paid to him (*z*).

should state claimant's interest accurately.

This claim should state correctly the nature of the claimant's interest in the land, and if he be owner, any existing tenancies should be specified. An error in this respect may be fatal to all the subsequent proceedings, as will appear by the following cases.

In one case (*a*) it appeared that the claimants, in answer to a

(*s*) *Sadd v. Maldon and Braintree R. Co.*, 6 Exch. 143; 20 L. J. (Exch.) 102.

(*t*) *Re Taylor*, 6 Railw. C. 741; *Tink v. Rundle*, 10 Beav. 318.

(*u*) *R. v. Bagshaw*, 7 T. R. 363; *R. v. Mayor of Liverpool*, 4 Burr. 2244; *R. v. Trustees of the Norwich Roads*, 5 A. & E. 563.

(*x*) *R. v. Committee for the South Holland Drainage*, 8 A. & E. 429, post.

(*y*) *R. v. Trustees of Swansea Harbour*, 8 A. & E. 447.

(*z*) See the form, App. tit. *Forms*. The party may, it seems, by this notice require that arbitrators shall be appointed. The liability of the company to pay the costs of the inquiry depends upon the sum which they may have previously offered (8 & 9 Vict. c. 18, s. 51, App. 53.) And when the claimant receives notice of the issuing of the warrant, he will be informed what amount

of compensation the company are willing to pay; *id.* sect. 38, post, App. 51. A statute must give costs expressly or they cannot be recovered. *Corrigal v. London and Blackwall R. Co.*, 5 Man. & G. 219; *R. v. Same*, 4 Railw. C. 119. A special jury may also be demanded, 8 & 9 Vict. c. 18, s. 54, App. 54.

(*a*) *North Staffordshire R. Co. v. Landon*, 2 Exch. 235; 17 L. J. (Exch.) 350. A notice which did not mislead would be held good, *Eastham v. Blackburn R. Co.*, 23 L. J. (Exch.) 199. In *Cameron v. Charing Cross R. Co.*, 16 C. B. (N. S.) 430; 10 L. T. (N. S.) 381, where a tenant under a lease for 7, 14, or 21 years claimed as "occupier" simply, it was held sufficient, though Erle, C. J., said it was the barest notice that would pass muster. See also *Healey v. Thames Valley R. Co.*, Q. B. (M. T.) 1864, where a notice that the lands "are held by me on

notice given by the company, stated that, as trustees under a will, they claimed an estate and interest in copyhold lands and hereditaments, and they claimed a certain sum as compensation for the said lands and hereditaments, and appointed an arbitrator. The company, by a notice which recited the claimant's notice, appointed an arbitrator on their behalf, and, an umpire being chosen, he made his award, whereby he awarded and determined that a certain sum was the value, and should be paid to the trustees "for the purchase of the fee simple in possession, free from all incumbrances, of and in the said copyhold lands" required to be purchased and taken as aforesaid. The company, being dissatisfied with the award, applied to set it aside, on the ground that the person who was tenant to the claimants had appeared before the umpire, and claimed compensation in respect of an agreement for the renewal of a lease, and on other grounds; and the Court of Exchequer held the award to be bad for uncertainty, inasmuch as the award ought to find the particular interest of the parties, whether an estate in fee or for life, and that the umpire had neither valued the interest of the claimants, nor found as a fact that they were entitled to the fee simple.

Requisites of the claim under 8 & 9 Vict. c. 18, s. 21.

North Staffordshire R. Co. v. London.

But where a claimant required the company to settle the amount of compensation to be paid to him "for the fee simple in possession" of land in the occupation of J. L., and the umpire by his award gave compensation for "the absolute purchase of the fee simple in possession of the land, and also for the immediate possession thereof," it was objected on behalf of the claimant that the award assumed that the claimant was in possession, and that it was therefore bad; but the Court said the answer was, that such assumption, if actually made, was in the claimant's favour and to his advantage, and therefore no matter of complaint for him. And further, that it did not appear clearly that any such assumption was made. The expression "fee simple in possession," in the claim, was used in contradistinction to fee simple in reversion or remainder. The compensation given could only be taken to be in respect of what was claimed; and if the tenants had any claim in respect of the actual possession of the land, their remedy was against the company, and not against the owner of the fee (*b*).

Re Bradshaw.

Care should also be taken that the claim describes the same premises as those which are the subject of the company's notice. Thus a company gave notice to the owners of certain land to treat for the purchase thereof, and the landowners thereupon sent the company a notice stating that their interest in the land was particularly de-

Claim should apply to same premises as those in company's notice.

lease," with a claim "for the value of my estate and interest in the said lands," was held not sufficient under sect. 68. But the Court, in giving judgment, did not notice sect. 122. Both *Cameron's case* and *Healey's*

case will probably go to the Exchequer Chamber, and perhaps to the House of Lords.

(*b*) *Bradshaw's Arbitration*, 12 Q. B. 562; 17 L. J. (Q. B.) 362.

Requisites of
claim under 8 &
9 Vict. c. 18, s. 21.

scribed in a schedule of claim served therewith, and that they claimed a certain sum as compensation for the same, and for damage sustained by the execution of the railway, and that, upon payment of such sum, they were willing to convey all their estate in the said land, and that, if the amount were not paid, they desired the matter to be settled by arbitration, and required the company to appoint an arbitrator. In the schedule of claim annexed to this notice were included certain pieces of land (not included in the company's notice), which the owners, under sect. 93 (ante, 178), required the company to purchase as lands severed by the railway, and of less than half an acre. The company then gave the landholders a notice, whereby, after reciting their notice, they appointed an arbitrator, to whom was to be referred the amount of compensation to be paid to the landowners "for the purchase of the said lands." The umpire received evidence of the value of the pieces of land, less than half an acre, and awarded one entire sum for the purchase of the fee simple of the land which the company required to purchase, and also of the portions of land which the owners required the company to purchase; but it was decided that the award was bad, there being no valid submission in respect of the last-mentioned lands (c).

Claimant should
give notice if
he requires the
whole of his
premises to be
taken.

And it is also to be observed that if the company give notice of their intention to take a part only of a house or other building, in a case where by force of the 92nd section they may be compelled to take the whole of the premises (d), it is the duty of the owner or other interested party forthwith to give the company notice that they are required to take the whole; because it has been decided that sect. 92 is not imperative on the company to take the whole, unless the owner requires them to do so (e).

As to disputed
compensation.
Sect. 22.

We will now assume that the party interested in the lands gives no notice to the company, and takes no step to treat under sect. 21: in such a case, the company are authorized to deal with the case as one of disputed compensation.

As to disputed compensation, sect. 22 enacts, that if no agreement be come to between the company and the owners of or parties by the act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands, or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed 50*l.*, the same shall be settled by two justices (f). The mode of doing this is pointed out by sect. 24 (g).

(c) *North Staffordshire R. Co. v. Wood*, 2 Exch. 244; 17 L. J. (Exch.) 354.

(d) Ante, 174.

(e) *Sparrow v. Oxford and Wolverhampton*

R. Co., 2 De G., M. & G. 94; and ante, 177.

(f) 8 & 9 Vict. c. 18, s. 22, post, App. 49.

(g) See as to this, post, Ch. VI.

By sect. 23, if the compensation claimed or offered in any such case shall exceed 50*l.*, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the company, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided (*h*).

If the claimant does not treat, the company may give notice of a warrant to assess the compensation.
8 & 9 Vict. c. 18, s. 23.

Sect. 38 requires the company to give the party ten days' notice of their intention to summon a jury to assess the compensation, and the notice must also state what amount of compensation the company are willing to pay (*i*).

Notice of the jury. Sect. 38.

On the receipt of this notice, the party who claims compensation has ten days allowed him to determine whether he will accept the offer made by the company, or not; and if he determines to decline the offer, he may declare his desire that the amount of the compensation shall be assessed by arbitrators, and not by a jury; for, as we have seen, by sect. 23, the party who claims compensation has, in all cases, the option of having the amount of it (if it exceeds 50*l.*) assessed by arbitrators, provided he gives the company notice thereof in due time. If, therefore, the party be desirous of referring the question of compensation to arbitration, he must take care to serve a notice on the company, stating such to be his desire, before the expiration of ten days from the day when he received the company's notice of their intention to summon a jury. After that period has elapsed, the company are authorized to issue their warrant to summon a jury (*h*); and if the warrant is once issued, it will be too late to require the appointment of arbitrators. It is, however, to be observed that the company have no option to require that the compensation shall be assessed by arbitrators; they can only issue a warrant to the sheriff, after having given the notice required by sect. 38.

Claimant may demand arbitration.

Entry before Purchase-Money ascertained, under Sect. 85.—Reserving for future consideration the mode of assessing the amount of disputed compensation before the different tribunals (*l*), we may

(*h*) 8 & 9 Vict. c. 18, s. 23, App. 49.

(*i*) Ibid. s. 38, App. 51.

(*k*) Ibid. s. 23, App. 49.

(*l*) Ch. VI. "On the mode of assessing Compensation," post.

observe that all the steps we have hitherto pointed out are applicable to cases wherein the company may not desire to obtain possession of lands to be purchased or permanently used, until after the purchase-money and compensation are ascertained, and the amount paid or deposited in the Bank.

Company may desire to enter on lands before the purchase-money, &c., is ascertained.

Company may injuriously affect lands before compensation is assessed.

Clauses relating to entry on lands. 8 & 9 Vict. c. 18, s. 84.

We must now, however, turn to a very important class of cases of frequent occurrence,—i. e. cases where the company have given a notice to treat, but desire to enter on the lands before the amount of the purchase-money and compensation to be paid is ascertained; and this will necessarily lead us to notice other cases, where the company have taken lands or injuriously affected them, by their works, without any notice,—and without having previously made satisfaction to the parties entitled to receive compensation. It will be convenient to state the clauses in the acts which relate to both these matters, before we offer any observations on the numerous decisions in the courts of law and equity, and it will be seen that the Consolidation Act is so framed, as to make it essential that both subjects should be considered together.

With respect to the entry upon lands by the company: By sect. 84 it is enacted, “that they shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required (*m*) to be purchased or permanently used (*n*) for the purposes and under the powers of the acts, until they shall either have paid to every party having any interest in such lands, or deposited in the Bank, in the manner herein mentioned (*o*), the purchase-money or

(*m*) If the company give notice to take part, and the landowner require them, under sect. 92, to take the whole, the company cannot enter upon paying into Court the value of part, but must pay in the value of the whole. *Giles v. London, Chatham and Dover R. Co.*, 30 L. J. (Ch.) 603.

(*n*) It has been determined, that where a permanent tunnel was made through the soil, without disturbing the surface, this amounted to a permanent using of the lands. *Ramsden v. Manchester and Altrincham R. Co.*, 1 Exch. 723; 12 Jur. 293. In cases where the entry is unlawful, ejectment or trespass may be maintained; *Doe d. Hutchinson v. Manchester, Bury and Rossendale R. Co.*, 14 M. & W. 687; 15 L. J. (Exch.) 208; or in some cases an injunction, post, tit. “Injunction.” But where a company agreed with a landowner that the question of compensation should be settled by arbitration, and the company, with the consent of the owner, entered upon the lands, and the arbitrators subsequently made an award, which became the subject of dispute between the parties, and the owner thereupon gave the company a notice to quit, and brought ejectment; the Court of Queen’s Bench said, that the action could not be

maintained, although the company had not tendered the money awarded, or a conveyance, but that the owner’s remedy was to proceed upon the award. *Doe d. Hudson v. Leeds and Bradford R. Co.*, 20 L. J. (Q. B.) 486; 15 Jur. 946; 16 Q. B. 796. See also *Knapp v. London, Chatham and Dover R. Co.*, 32 L. J. (Exch.) 236.

(*o*) Sect. 76, post, App. 58, provides on this subject,—that if the owner of any lands purchased or taken by the company, or of any interest therein, on tender of the purchase-money or compensation, either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the company; or if he refuse to convey or release the lands as directed by the company; or if any such owner be absent from the kingdom, or cannot, after diligent inquiry, be found; or fail to appear on the inquiry before a jury; then, in either of the above-mentioned cases, the company may deposit the purchase-money or compensation payable in respect of the lands, or any interest therein, in the Bank of England, to the credit of the parties interested in such lands, subject to the control and

compensation agreed or awarded to be paid to such parties respectively, for their respective interests therein: provided always, that, for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the company, after giving not less than three, nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof" (*p*).

Entry on lands.
8 & 9 Vict. c. 18,
s. 84.

Sect. 85 provides, "that if the company shall be desirous of entering upon and using any such (*q*) lands before an agreement shall have been come to, or an award made or verdict given, for the purchase-money or compensation to be paid by them in respect of such lands, it shall be lawful for the company to deposit (*r*) in the Bank, by way of security, as hereinafter mentioned, either the amount of purchase-money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor (*s*) appointed

Entry before purchase on making deposit and giving bond.
Sect. 85.

disposition of the Court of Chancery in England, or the Court of Exchequer in Ireland. By sect. 77, when the money has been thus deposited, the cashier of the Bank is required to give the company a receipt for the same; and the company may then, if they think fit, execute a deed-poll containing a description of the lands, and declaring the circumstances under which the deposit has been made; "and thereupon all the estate and interest in such lands of the parties, for whose use and in respect whereof such purchase-money or compensation shall have been deposited, shall vest absolutely in the company, and as against such parties they shall be entitled to immediate possession of such lands." Where an act empowered a company to summon a jury in cases where the owner of lands failed to disclose his title, and, an owner having failed to comply with the act in this particular, a jury assessed the amount of compensation, and the company, without calling upon him to produce his title, paid the amount of compensation into the Bank, in pursuance of a clause similar to the 76th section, and took possession of the lands; it was held, that the company were not authorized to take this step. Rolfe, B., observed,—“After the compensation was assessed, the company were bound to call on the owner to show his title; and until they do so, they have no right to take possession of the land by paying the amount of the compensation money into Chancery. Neither the letter nor the spirit of the act bears out such a construction, and it would be most unjust if it did.” *Doe d. Hutchinson v. Manchester, Bury and Rossendale R. Co.*, 14 M. & W. 687; 9 Jur. 949; 15 L. J. (Exch.) 208.

See this subject further discussed, post, Ch. VII., Sect. 4, "On the Title to and Conveyance of Lands purchased."

(*p*) 8 & 9 Vict. c. 18, s. 84, App. 60. Where a company entered upon land and drew a trig line along it, without the consent of, and without having given any notice to the owner, whereupon he filed his bill and applied for an injunction, and the company having stated that they entered upon the land solely for the purpose of making a survey, and that they did not intend to proceed any further, without giving the requisite notices, the Court refused to make any order on the motion, but reserved the costs. *Fooks v. Wilts, Somerset and Weymouth R. Co.*, 5 Hare, 199; 4 Railw. C. 210; and see post, 191, note (*c*).

(*q*) *Giles v. London, Chatham and Dover R. Co.*, 30 L. J. (Ch.) 603, and cas. cit. ante, 177, note (*e*).

(*r*) The proceedings under this section were held, by Wigram, V. C., not to be invalid, although the money appeared to have been deposited two days before the date of the valuation. *Stamps v. Birmingham and Stour Valley R. Co.*, 6 Railw. C. 126.

(*s*) It seems that the company ought not to appoint a surveyor who had been previously in their own employment to make this valuation; but Sir K. Bruce, V. C., declined to issue an injunction on this objection; or on the ground that the obligors to the bond were the solicitors to the company, who, as sureties in similar bonds, were answerable for large sums of money. *Langham v. Great Northern R. Co.*, 1 De Gex & Sm. 486; 5 Railw. C. 263; 16 L. J. (Ch.) 437.

Entry on lands before purchase, on making deposit and giving bond. 8 & 9 Vict. c. 18, s. 85.

by two justices in the manner hereinbefore provided (*t*) in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein, which such party is entitled to or enabled to sell and convey (*u*), and also to give to such party a bond (*x*), under the common seal of the company, with two sufficient sureties, to be approved of by two justices, in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the Bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase-money or compensation, as may in manner hereinbefore provided be determined to be payable by the company in respect of the land so entered upon, together with interest thereon, at the rate of 5*l.* per centum per annum, from the time of entering on such lands, until such purchase-money or compensation shall be paid to such party, or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the company to enter upon and use such lands without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of the acts (*y*).

Deposit remains to the credit of the owner of the lands. Sect. 86.

By sect. 86, the money thus directed to be paid into the Bank is placed to the account of the Accountant-General, to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the Court, and the company are entitled to receive a receipt for the deposit.

Deposit returned on performance of conditions of bond. Sect. 87.

By sect. 87, this deposit remains by way of security to the parties whose lands shall have been entered upon, for the performance of the condition of the bond, and may be invested in bank annuities or government securities and accumulated; and, upon the condition of

(*t*) Sect. 59.

(*u*) No notice need be given by the company to the owner of their intention to take these proceedings. In *Bridges v. Wilts, Somerset and Weymouth R. Co.*, 4 Railw. C. 622; 16 L. J. (Ch.) 335; 11 Jur. 315, Lord Cottenham, C., said, "That no doubt there was a difficulty as to the bond, because the sureties were to be approved of, if the parties differed, and it was alleged, that no opportunity had been afforded for raising the objection as to the sufficiency of the sureties. Parties, however, applying for an injunction, must show some injury. In the situation in which the plaintiff was placed, he had no cause for differing, and the pro-

visions of the act having been complied with, the company were entitled to take possession of the land." See also *Poynder v. Great Northern R. Co.*, 5 Railw. C. 196; *Langham v. Same*, 1 De Gex & Sm. 486; 5 Railw. C. 263; 16 L. J. (Ch.) 437.

(*x*) See as to this bond, post, p. 194.

(*y*) 8 & 9 Vict. c. 18, s. 85, App. 60. If a railway company avail themselves of the compulsory powers given by this and the following sections, they cannot also enforce specific performance of an agreement entered into with respect to the same lands. *Bedford and Cambridge R. Co. v. Stanley*, 32 L. J. (Ch.) 60.

the bond being fully performed, the Court may order the money, with the accumulations, to be repaid or transferred to the company (z); or if the condition be not fully performed, the Court may order the same to be applied for the benefit of the parties for whose security the same was deposited (a). If the Accountant-General's office be closed, the money may be deposited in the Bank, and placed to his credit at a subsequent period (b).

Entry on lands.

By sect. 89, if the company, or their contractors (c), shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the company shall forfeit to the party in possession of such lands the sum of 10*l.* over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the company or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the company shall be liable to forfeit the sum of 25*l.* for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior

Penalty for entry without consent or payment or deposit.
8 & 9 Vict. c. 18, s. 89.

(z) The company may obtain their money upon petition, as soon as the conditions of the bond have been complied with, but the vendor should be a co-petitioner, or it should be shown by affidavit that he has been served with a copy of the petition. *Ex parte South Wales R. Co.*, 6 Railw. C. 151. Where a bond was given, and the estimated value of the land deposited under the 85th section, and the amount of the purchase-money was afterwards determined by a jury and paid to the parties entitled, who executed a conveyance of the lands to the company, Lord Cottenham, C., determined that the owners of the land had no lien on the money deposited by the company, for certain costs relating to the holding of the inquiry and making the conveyance, and also of a suit instituted against the company. His lordship was of opinion that the 80th section did not apply to such a case, and that there were other ample powers contained in the act to enable the party to recover such costs. *Ex parte Great Northern R. Co.*, 5 Railw. C. 269; 12 Jur. (Ch.) 885, overruling the Vice-Chancellor's decision, reported 17 L. J. (Ch.) 314. See also *Ex parte Stevens*, 5 Railw. C. 437.

(a) 8 & 9 Vict. c. 18, ss. 86 and 87, App. 61.

(b) *Ibid.* s. 88.

(c) An injunction will not be granted to

restrain companies from entering on lands, unless it is clearly shown that they are about to commit a trespass. Thus, where a corporation, having right to take land for the purposes of certain public works, gave notice to the owner of the inheritance of an intention to take it, and they then entered regularly upon the land, for the purpose of surveys, &c.; and afterwards their contractors, without the knowledge of the corporation, but with the assent of the occupying tenants, brought some waggons, and rails, and other implements on the land, and left them there, but did not commence the works, or do any damage, and all this was done without obtaining the assent of the plaintiff, but it became known to his agent, who, without any previous communication with the defendants, filed his bill for an injunction to restrain them from allowing the waggons, &c., to remain on the land, and from taking possession of the land until they had complied with the provisions of the Lands Clauses Consolidation Act: Sir R. T. Kindersley, V. C., on these facts said, that though the corporation were bound by the acts of their contractors, the acts done were not a taking possession within the meaning of the act, and that the bill was improperly filed. *Standish v. Mayor of Liverpool*, 1 Drew. 1; and see ante, 189, note (p).

Entry on lands.
8 & 9 Vict. c. 18,
s. 89.

courts: provided always (*d*), that nothing herein contained shall be held to subject the company to the payment of any such penalties as aforesaid, if they shall bonâ fide, and without collusion, have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the company may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit, by way of security in respect thereof, as hereinbefore mentioned, although such person may not have been legally entitled thereto (*e*).

Actions for penalties.
Sect. 90.

By sect. 90, on the trial of any action for such penalty, the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the company (*f*).

Sheriff may deliver possession.
Sect. 91.

By sect. 91, if, in any case in which, according to the provisions of the acts, the company are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the company from entering upon or taking possession of the same, it shall be lawful for the company to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same; and upon the receipt of such warrant, the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the company from the compensation, if any, then payable by them to such party; or, if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly (*g*).

Statutory remedy of owner or occupier, if lands have been taken, or injuriously affected, without compensation being paid. Sect. 68.

Compensation where assessed under Sect. 68.—Sect. 68, which relates to the second class of cases to which we have referred (*h*) as well as to the first,—enacts, that if any party shall be entitled

(*d*) In construing a clause in a special act, similar to the above, Pollock, C. B., said, "Sections like this, which may be justly called penal, should be strictly construed, but a proviso which has the effect of saving parties from penal enactments should be liberally construed." *Hutchinson v. Manchester, Bury and Rossendale R. Co.*, 15 M. & W. 314; 15 L. J. (Ex.) 293; 3 Railw. C. 748.

(*e*) 8 & 9 Vict. c. 18, s. 89, App. 61.

(*f*) Ibid. s. 90, App. 61.

(*g*) Ibid. s. 91, App. 62.

(*h*) Ante, p. 188. In *Imperial Gas Light Co. v. Broadbent*, 29 L. J. (Ch.) 379, Lord Campbell said in the House of Lords, that it had been again and again decided that, under this section, no compensation can be sought except for injuries occasioned by what is done under the powers conferred by the legislature.

to any compensation in respect of any *lands* or of any *interest therein*, which shall have been *taken for*, or *injuriously affected by*, the execution of the works, and for which the company shall not have made satisfaction, and, if the compensation *claimed* in such case shall exceed 50*l.*, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and, if such party desire to have the same settled by *arbitration*, it shall be lawful for him to give notice in writing to the company (*i*) of such his desire, stating in such notice the *nature of the interest* in such lands *in respect of which* he claims compensation, and the amount of the compensation so claimed therein; and unless the company be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by *arbitration* in the manner herein provided; or, if the party so entitled as aforesaid desire to have such question of compensation settled by a *jury*, it shall be lawful for him to give notice in writing of such his desire to the company, stating such particulars as aforesaid; and, unless the company be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided; and, in default thereof, they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed; and the same may be recovered by him, with costs, by action in any of the superior courts (*k*).

8 & 9 Vict. c. 18,
s. 68.
Compensation for
lands taken or
injuriously
affected.

Thus we see that the company may enter upon lands without the consent of the owners, provided a deposit of money be first made in the Bank of England, and a bond be also given (*l*); and further, that if any lands are taken or injuriously affected by the company's works, and for which the company may not have made satisfaction, a summary remedy for the recovery of such satisfaction is given by the statute.

Decisions on the
foregoing clauses.

We proceed to notice the decisions upon these important matters, —and, first, it is incumbent on the company, when they seek to avail themselves of the powers of entry, after a deposit made, and bond given, to be able to show clearly and satisfactorily, that they have

(*i*) See ante, 184. The plaintiff's messuages being injured by the works of "the Blackburn R. Co.," he served the secretary at his office, with a notice under this section, addressed to "The Blackburn and Clitheroe R. Co.;" held sufficient, *Eastham v. Blackburn R. Co.*, 9 Exch. 758.

(*k*) Where by a special act the Lands Clauses Act, "except so much as related

exclusively to the purchase and taking of land by compulsion," was incorporated with it; it was held that the 68th section of the Lands Clauses Act was not excepted. *Broadbent v. Imperial Gas Co.*, 26 L. J. (Ch.) 276.

(*l*) See form of bond, post, App. tit. *Forms*.

Entry on lands—
Sufficiency of
bond under sect.
85.

The bond should
be given in the
very terms of the
statute.

Hosking v. Phillips.

fulfilled all the conditions contained in the statutes; for the Courts have always been disposed to give the benefit of any doubt on this point to landowners, whose control over their own property is so seriously interfered with. Thus, it has been ruled that *the bond should be given in the very terms of the statute*. In a case where the bond instead of being conditioned for “payment to the party, or deposit in the Bank for the benefit of the parties interested,” was conditioned for “payment to the party, his heirs, executors, administrators or assigns, and for deposit in the Bank of England, or otherwise, for the benefit of the parties interested, as the case might require, under the provisions of the Lands Clauses Consolidation Act,” it was decided that the bond was not in compliance with the statute, by reason of the introduction of the words “or otherwise.” Parke, B., said:—

“If the only objection had been, that, instead of being conditioned for payment to the plaintiff simply, it introduces the words ‘heirs, executors, administrators and assigns,’ I should have doubted whether it was bad on that account (*m*), for it is in effect implied from the nature of the bond that, if the plaintiff dies, payment shall be made to the party entitled to the estate; that is, if freehold to his heirs, if leasehold to his executors. Then, with regard to the other objection, I think that the words ‘or otherwise’ are not authorized by the act of Parliament. The words of the act are plain. The bond is to be conditioned ‘for payment to the party, or deposit in the Bank for the benefit of the parties interested,’ and no more. That is required before the company are authorized to enter upon the land, and difficulty arises from introducing equivalents. I conceive that a great difficulty might be imposed on a plaintiff, in the event of his being obliged to sue on a bond conditioned for payment in any other way than that provided by the act of Parliament. The 85th clause requires only two modes, either payment to the party himself, or deposit in the Bank of England. There is no doubt about the proper form, and these companies would exercise a wise discretion if in future they would confine themselves to the terms of the act” (*n*).

*Poynder v. Great
Northern R. Co.*

So where the condition was, if the obligors “do and shall *on demand* well and truly pay, or cause to be paid to the plaintiff, his heirs, executors, administrators or assigns, or do or shall *on demand* deposit in the Bank of England” the amount of the purchase-money or compensation when it should have been determined: Lord Cottenham, C., although the plaintiff might be considered rather a gainer than a loser by the departure in the form of the bond from that strictly prescribed by the act, continued an injunction until the company should have given a bond in conformity with the provisions of the act (*o*).

(*m*) See on this point *Dakin v. L. and N. W. R. Co.*, 3 De Gex & Sm. 414, where a bond given to a leaseholder in this form was objected to; but no intimation appears of the opinion of Sir K. Bruce, V. C., who sent that case to law.

(*n*) *Hosking v. Phillips*, 3 Exch. 181; 18 L. J. (Exch.) 1.

(*o*) *Poynder v. Great Northern R. Co.*, 5 Railw. C. 196; 2 Phillips, 330. See also *Langham v. Same*, 1 De Gex & Sm. 486; 5 Railw. C. 263; 16 L. J. (Ch.) 437.

But where the company were dealing with a lessee of lands, in respect of his individual interest therein, and, no agreement being made between the parties, the company gave a bond conditioned for payment by the company "to the lessee, his executors, administrators or assigns, or for the deposit in the Bank of England, as the case might require, for his or their benefit, under the provisions of the Lands Clauses Consolidation Act, of all such purchase-money or compensation as may, in the manner by the same act provided, be determined to be payable by the company in respect of the interest of the said lessee in the said hereditaments:" Lord Cottenham, C., held that the bond was sufficient, and that it was not necessary to use the alternative form. His Lordship observed:—

Entry on lands—
Sufficiency of
bond under sect.
85.

*Willey v. South-
Eastern R. Co.*

"The company have dealt with the party as the owner of the lease; this they were perfectly competent to do. If they agreed with him, and ascertained the value of the leasehold interest, having bought his lease at a price so agreed on, they were not bound to look to any other parties; because they, at their own risk, deal with him as owner of the lease, and he claims as such owner. Still, as he is only owner of the lease, the company have to require from him, before he can receive the value of the land taken, the performance of certain acts by which their title is to be completed. He must assign to them the lease; he must part with that which they have purchased, before he can call upon them to part with the purchase-money. The mode in which the question arises here is, that the company only require to have the money kept in medio, until the time shall come when the lessee shall be advised to entitle himself to the money, upon the terms of doing all that he is compellable to perform before he can receive the money. The bond, therefore, provides, precisely for that event; nor do I know in what language that can be better provided for. It may be true that the party was not entitled to receive the whole of the money; that is to say, the company might have dealt with him as a party under the provisions of the act, not under his estate, but under his power of selling; but that is not the case here. The company have dealt with him in respect of his own interest, and are willing to deal with him and to purchase his interest, only requiring to have the means, as against him, of compelling him to deal with that interest so as to vest it in themselves. Now the case of *Poynder v. Great Northern R. Co.*, (ante, 194,) has been compared to this. I have looked at it several times in order to find out the similarity, and I cannot discover it. The company did not, in that case, deal with the party as having the beneficial interest; but, on the contrary, the bond was in the general terms of the act, which is in the alternative, so that it might embrace the particular interest, or any other interest. The money might be paid into Court, not for the benefit of the party with whom they contracted for a particular interest, but for security, and for the benefit of those entitled to other interests in the land. And the difficulty as to the bond there was, that, although the money appeared to be paid into Court upon both alternatives, in the language of the act, it was made payable to the party on demand, so that there was an inconsistency in the condition of the bond. It did not appear that it was paid in on account of the owner of the land, but on one or other account, and yet it was made payable to him on demand. The objection felt to that condition was, that, though the money was payable to one individual, there was nothing to show that that individual was the party entitled" (p).

(p) *Willey v. South-Eastern R. Co.*, 6 Railw. C. 100; 18 L. J. (Ch.) 201; 1 Macn. & Gord. 58.

Entry on lands—
Sufficiency of
bond under sect.
85.

Separate bonds
should be given
to tenants in
common.

Lands in mort-
gage.

Bond, &c., in
respect of all
lands in notice.

A valid bond sub-
stituted for an
invalid one will
be recognized in
equity.

If *tenants in common* are interested in the lands, it seems that the company should deal with them separately for their respective interests, and that it would be irregular to pay one sum into the Court of Chancery to the joint account of all the tenants in common, or to execute a bond conditioned to pay the compensation to them jointly (*q*).

If the lands are in *mortgage*, the company should communicate with the mortgagee as well as with the mortgagor, and if no agreement be made, and the company desire to enter on the lands, they should pay into Court and give bond, for a sum of money sufficient to meet all claims which the mortgagee may be entitled to enforce. In a case where a company having notice that lands required by them were mortgaged, and that the mortgage could not be paid off until a certain future day, and the company, nevertheless, merely paid the purchase-money into Court, upon the ordinary valuation, to the credit of the mortgagor, and entered upon the lands without negotiating with the mortgagee, Lord Langdale, M. R., decided, that the company, not having provided for the expenses of re-investment, or for the costs of the mortgagee, or any compensation for the difference of interest, in pursuance of 8 & 9 Vict. c. 18. s. 114, had wrongfully taken possession of the lands, and he granted an injunction to restrain them from prosecuting the works (*r*).

And the bond should be given and the deposit made in respect of all the lands described in the notice to treat, for a company cannot, as we have seen, recede from their notice (*s*).

But it is important to observe, that the *company may give a second bond*, if the first be informal or insufficient, and even amend the description of the lands therein, and make a new deposit; or they may amend a defective proceeding, by causing a jury to be summoned to assess the compensation to be paid for that portion of the lands in respect of which they have not paid a deposit. In all cases of this description, whatever the liabilities of the company may be at law, a Court of Equity will not grant an injunction against them, after they have substituted a valid bond, on the ground that the original possession taken under the defective bond is not a taking of possession under the act. In a case where this point was urged before Lord Cottenham, C., he said,—

“There was another objection, that, inasmuch as possession had been taken of

(*q*) *Langham v. Great Northern R. Co.*, 1 De Gex & Sm. 486; 5 Railw. C. 263; 16 L. J. (Ch.) 437. If the company enter with the consent of the tenant, and do permanent damage to the lands, the *owner* may, nevertheless, obtain an injunction and compel the company to make a deposit of money and give the bond required by section 85. *Armstrong v. Waterford and Limerick R. Co.*, 10

Ir. Eq. R. 60. See further, tit. “Injunction,” post.

(*r*) *Ranken v. East and West India Docks*, 12 Beav. 298; 19 Law J. (Chan.) 153.

(*s*) Ante, 181; *Barker v. North Staffordshire R. Co.*, 5 Railw. C. 401; 2 De Gex & Sm. 55; *Giles v. London, Chatham and Dover R. Co.*, 30 Law J. (Chan.) 603.

this land before the bond was given, it is not a taking possession under the act. It might come to this, that the 85th section could never apply at all, if there was any mistake in the bond. It is impossible to maintain this; and, although this Court has very beneficially interfered to prevent abuses of powers by these great companies, yet there must be something like equity as the foundation for the Court's interference upon the mere abuse of power, which is the ground for injunction. But here the party is asking, by a construction to be put upon the 85th section, to strike that section entirely out of the act. Now, if the Court finds the means of doing justice between the parties, it will not interfere, except under such rules and provisions as may be equitable for that purpose; and the Court, therefore, will not deal with an injunction otherwise than for the purpose of seeing that each party has that to which each party is entitled. Here is possession erroneously taken; it is supposed erroneously taken, because the provisions of the bond are not according to the act; but in *Poynder v. Great Northern R. Co.* (ante, 194), possession was also taken under a bond, which I thought was not within the provisions of the act. In that case, however, I dealt with the possession (whether taken de novo, or to be continued in the hands of the company, not being material) as a possession under the provisions of the act. The company giving the owner of the land all the benefit the act intended he should have, the Court did not treat the possession as not according to the provisions of the act, but dealt with it as being within the act itself. I consider that not only as correct under the terms of the act, but as a point upon the act decided in that, and, I believe, in other cases"(t).

Entry on lands—
Substitution of
valid, for invalid,
bond under sect.
85.

*Willey v. South-
Eastern R. Co.*

Whenever objections are made on the ground that the proceedings of the company are irregular, a landowner, who goes into equity to complain of the insufficiency of the bond, deposit or other proceeding under the statute, should state the whole of his case in the first instance. Thus, where the original objection was that the company had given an informal bond, and had proceeded to enter upon part only of certain lands contained in a notice, Lord Cottenham, C., refused to grant an injunction, where, in a later stage of the proceedings, the landowner set up a new ground of equity, viz., that the company were bound to take the whole of a manufactory, by virtue of 8 & 9 Vict. c. 18, s. 92 (u).

All objections
intended to be
relied upon must
be taken in the
first instance.

The next subject for our consideration is, the *manner of proceeding to have compensation assessed*, after the company have thus taken possession of lands without the consent of the owner, under the 85th section.

Mode of proceed-
ing to obtain
compensation.

It was at one time doubtful, whether the onus of taking the initiative steps to have the purchase-money and compensation assessed lay upon the owner of the lands or upon the company; but Lord Cottenham, C., decided (x), that, under the 68th section (y), the

After the com-
pany have taken
possession of
lands, the onus of
proceeding to the
assessment of the
compensation lies
on the owner.

(t) *Willey v. South-Eastern R. Co.*, 1 Macn. & Gord. 58. Lord Cottenham also observed, that a difficulty might arise in this case, as to the period from which the interest was to be calculated, i.e. "from the time of entering on such lands," under the 85th section—whether this should be, from the time when the original possession was taken, or from the time when the possession was set right by the substitution of another

bond; but no opinion was given on this point. *Ibid.* 1 Macn. & Gord. 70.

(u) *Barker v. North Staffordshire R. Co.*, 5 Railw. C. 401; 2 De G. & Sm. 55; ante, 174.

(x) *Adams v. London and Blackwall R. Co.*, 2 Macn. & G. 118; 19 Law J. (Ch.) 557; 6 Railw. C. 271.

(y) Ante, 192.

Entry on lands—
The remedy given
by section 68 is
applicable to
cases of entry
under section 85.

onus lay upon the owner. That learned judge said, he was of opinion that this section was intended to cover every case in which the company, whether by right or wrong, or by any other means, had got into possession of property for which they had not paid, or in the exercise of the powers of the statute had injuriously affected the property of others, for which injury they were bound to make compensation. In all cases falling within this section, the company, being in possession, and not having paid the compensation, were not left to their own discretion, or to the pressure of their own wants, to induce them to summon a jury; but a remedy, prompt and effectual, was given to the owners to compel them to do so. This remedy was, to make a claim pursuant to the 68th section, stating the amount of compensation required, and if the company did not enter into an agreement to pay the same, or proceed to arbitration, or within twenty-one days issue their warrant for a jury, as the case may be, they were liable to pay the sum claimed to be recovered, with costs.

This decision was subsequently received with approbation in the Court of Queen's Bench (z), and it may now be taken as settled law that the owner may, in all such cases, avail himself of this short and simple remedy for obtaining compensation from the company, and he seems to have this remedy in addition to his right to a mandamus.

If matters of
equity are pend-
ing, proceedings
under section 68
will be stayed.

But if questions in equity arise, they must be determined before the common law remedy can be resorted to. Thus, where lessees gave the company a notice to take the whole of a manufactory, and the company waited until their lease had expired, and then deposited money and gave a bond, whereupon the lessees, who had continued in possession, took proceedings under the 68th section, and it appearing to the Court that there were matters of equity to be determined, before it could be known what was the subject matter the jury were to have submitted to them as the ground of the claimant's demand of compensation, an injunction was granted to restrain the proceedings until the rights of the parties had been determined (a).

It seems that
under section 68
no notice need be
given by com-
pany of their in-
tention to issue a
warrant.

Questions have arisen as to whether the various clauses in the Lands Clauses Consolidation Act, which refer to the proceedings before arbitrators and juries, and which are embraced in a series of sections relating to these subjects (b), are applicable to cases arising on the 68th section, as well as to ordinary cases. The Court of Queen's Bench determined that sect. 38, which requires the company to give ten days' notice of their intention to cause a jury to be sum-

(z) *Doe d. Armistead v. North Staffordshire R. Co.*, 20 Law J. (Q. B.) 249; 15 Jur. 944; 16 Q. B. 526.

(a) *South-Western R. Co. v. Coward*, 5 Railw. C. 703; and see further on this sub-

ject, post, tit. "Injunction."

(b) See these sections and the cases thereon, post, Chap. VI., "On the Mode of Assessing Compensation."

moned, does not apply to a proceeding under section 68 (c), and a plea in answer to an action brought on that section was held to be sufficient, wherein the company alleged that they issued a warrant within twenty-one days after the receipt of the plaintiff's notice that he desired to have the question of compensation settled by a jury, without adding that they had given the plaintiff any notice of their intention to do so (d). On the other hand, it was decided in the Exchequer Chamber, affirming a decision in the Court of Common Pleas, that sects. 51 and 52, which provide for the payment of the costs of an inquiry before a jury, are incorporated with sect. 68 (e), and that a party who claimed compensation, having demanded a jury, and recovered a larger sum than the company had previously offered, was therefore entitled to recover the costs of the proceedings. The Court said, on affirming the judgment, "It is not necessary for us to say whether we concur in the opinion of the Court of Common Pleas, that *Railstone v. York and Berwick R. Co.* was wrongly decided, for that case may be good law and yet the decision in this case may be also correct."

But the provisions as to costs apply to section 68.

It is also to be observed, that a party cannot take proceedings under the 68th section, unless his lands have been *actually* taken, or *actually* injuriously affected. If, therefore, a company give notice of their intention to take lands, but do not afterwards actually take possession or injuriously affect them, but refrain altogether from taking any steps to carry out their intention, the remedy of the owner is to apply for a writ of mandamus to compel the company to assess the purchase-money and compensation. It has been decided, that the owner or other party injured cannot in such a case make a demand of a certain sum, under the 68th section, and afterwards bring an action to recover the amount demanded, on the default of the company to issue a warrant to the sheriff (f).

Lands must be actually taken or injuriously affected before section 68 can be enforced.

The Court of Exchequer said on this point,—

"The question here is, what is the meaning of the words 'lands taken for the execution of the works?' For it is to such lands alone that the clause applies. It has been determined upon several occasions by Lord Cottenham, and, independently of his high authority, we entirely concur in that opinion, that when a company, as here, give notice to a party that they require his lands for their works, it amounts

Judgment of the Court of Exchequer on this point.

(c) This decision is the more important, inasmuch as it shows that the claimant will have no opportunity of requiring a special jury, unless he demands one in his original notice, when he requires the compensation to be settled by jury.

(d) *Railstone v. York, Newcastle and Berwick R. Co.*, 15 Q. B. 404; 19 L. J. (Q. B.) 464. Coleridge, J., diss. In *Richardson v. South-Eastern R. Co.*, 11 C. B. 154; 2 L. M. & P. 409; S. C. in error, 21 L. J. (C. P.) 122; 16 Jur. 151; 15 C. B. 810, some of the judges intimated doubts as to

this decision. But it was approved of and followed in *Hayward v. Metropolitan R. Co.*, 33 L. J. (Q. B.) 73. See also *Healey v. Thames Valley R. Co.*, Q. B., M. T. 1864.

(e) *South-Eastern R. Co. v. Richardson*, 21 L. J. (C. P.) 122; 16 Jur. 151; 15 C. B. 810; *Richardson v. South-Eastern R. Co.*, 11 C. B. 154; 20 L. J. (C. P.) 236. See *Hayward v. Metropolitan R. Co.*, ubi supra.

(f) *Burkinshaw v. Birmingham and Oxford Junction R. Co.*, 5 Exch. 475; 20 L. J. (Exch.) 247.

*Burkinshaw v.
Birmingham and
Oxford Junction
R. Co.*

to an agreement by them for the purchase of those lands, *assented to by the opposite party (g)*, on the terms of making the compensation in the way appointed by the act, under which such notice is given, and *binds both parties* finally. In some sense, therefore, lands upon such notice being given, may be described as lands taken for the execution of the works. And so in one case the Court of Queen's Bench called them, and we think correctly. But the point is, whether the 'lands taken,' in the 68th section, mean lands actually taken into the possession of the company, and those alone; and after carefully considering the various clauses of the act preceding the 68th section, we have arrived at the conclusion that this is the correct construction. These preceding provisions really exhaust the whole of the cases in which the company gives notice of requiring the lands of the owners adversely, when the company requiring them are not in the possession of the lands, and can only obtain that possession upon payment of the ascertained compensation. But another class might exist and require to be provided for, in which the above provisions could not be applied, and that was the class when the company had been permitted to take possession without any distinct agreement for compensation, or when, in the execution of their works, injury, not originally in the contemplation either of the company or of the owners, was actually incurred. And the literal meaning of the words 'lands which shall have been taken or shall have been injuriously affected,' not 'lands which shall be taken, or shall be injuriously affected,' clearly, we think, points to this clause alone. Independently therefore of the argument, not an unimportant one, that the construction contended for would not give full effect to both the 23rd and 68th sections, but make them in some degree inconsistent, we have come to the conclusion that upon the true construction of the 68th section, the words 'lands taken,' &c., include only lands actually taken or actually affected injuriously by the company, and consequently that these lands, not having been so taken, this action cannot be sustained against the defendants."

No injunction lies if lands are injuriously affected by works on the company's own lands.

It is also important to observe, that where lands *are* actually injuriously affected by the company, in consequence of works in the course of construction on their own lands, or on the lands of other parties not complaining, the party sustaining the injury cannot obtain an injunction on the ground that he has received no notice, and no offer of compensation, if it appears that the company are only exercising the statutory powers entrusted to them. In cases of this description, the claimant should allow the works to be completed, and then take proceedings under the 68th section (*h*).

Lands injuriously affected by works on the company's own lands.

Hutton v. London and South-Western R. Co.

On this subject Sir J. Wigram, V. C., said,—

"One question to be answered was, whether it was lawful for the company to commence those works before they had made compensation. The Court would not interfere to restrain companies from executing their lawful powers, unless there was some special equity to the contrary, arising out of some agreement or circumstances. If the lawful powers were not exceeded, the Court would not interfere.

(*g*) But see as to the words in italics, *Haynes v. Haynes*, 30 L. J. (Ch.) 578; 1 Dr. & Sm. 426.

(*h*) It was objected in *Langham v. Great Northern R. Co.*, 1 De Gex & Sm. 486; 5 Railw. C. 263; 16 L. J. (Ch.) 437, that the company, in executing their works, would greatly alter the appearance of the land,

(which the company had entered upon under section 85,) and that a jury would not be likely to assess sufficient compensation to the owner, if they were called upon to give a verdict, after the damages were sustained, but Sir K. Bruce, V. C., said, this was no ground for the interference of equity.

The question here must be answered by the Lands Clauses Consolidation Act, and the Railways Clauses Consolidation Act. In the case of the purchase of land, the 84th section of the former act provided that the price was to be paid before entry, and the 85th section provided for cases where the company, wanting immediate possession, and before the time of payment, were allowed, upon having the amount ascertained in the mode pointed out by the act, paying the money into the Bank, and giving a bond to enter upon the land before the price was actually paid. Those were the important clauses as applicable to the present case. But the case of damages, consequential upon the exercise of the powers of the company upon their own land, or upon the land of other persons not complaining, might stand in a different position from that of damages which were consequential on a purchase, and must be determined by the Railways Clauses Consolidation Act. That act required the company to make compensation to all persons whose interests were injuriously affected by the acts of the company. There was some difficulty arising out of the language of several of the clauses of this act in construing them so as to bring every case within them. Several sections of that act had reference to the question of compensation. The question in this cause arose under the 44th section, which said the company should make compensation, and that the amount of compensation or damages should be ascertained in the way pointed out by the Lands Clauses Consolidation Act, but did not say whether the damages should be ascertained before the company began the work upon their own land, or at any time afterwards. In *Lister v. Lobley* (i), the judges were unanimously of opinion that it was not unlawful for a company to commence works (provided they were within their powers), although they might be attended with damage to others, before making or tendering compensation for expected damage. That case was an authority in point. The ground upon which the Court there proceeded was the impracticability of knowing, in many cases, whether damage would or would not be sustained from the unlawful acts of the company; and, if it was certain that damage would follow, the difficulty of measuring the extent of it. Upon carefully reading through the Railways Clauses Consolidation Act, it will be found that, in many of the cases specified, it would be absolutely impossible for a jury to measure the damages which a company might be bound to tender before the work was commenced. To such cases the reasoning of *Lister v. Lobley* was applicable, and was unanswerable" (k).

Lands injuriously affected by works on the company's own lands.

Works may be commenced before compensation.

If a party proceeds to enforce the provisions of the 68th section against the company, on the ground that his lands have been injuriously affected, equity will not grant an injunction to restrain the proceedings, on an allegation that the injury supposed to have been sustained by the claimant is not the subject of a legal claim within the meaning of the statute (l).

An injunction will not lie on the ground that no damage for which compensation is awarded has been sustained.

But although an injunction cannot be obtained, it is now settled that, if the claimant proceeds against the company under the 68th

But it is a good plea to an action brought on the 68th section, to allege that no such damage has been sustained.

(i) 7 A. & E. 124.

(k) *Hutton v. London and South-Western R. Co.*, 7 Hare, 259; 18 L. J. (Ch.) 345. And see *Ferrand v. Corporation of Bradford*, 21 Beav. 412; *Macey v. Metropolitan Board of Works*, 33 L. J. (Ch.) 377, 383.

(l) *East and West India Docks Co. v. Gatlke*, 3 Macn. & Gord. 155; 20 L. J. (Ch.) 217; 15 Jur. 261; post, 222; *South Staffordshire R. Co. v. Hall*, 20 L. J. (Ch.)

397; post, 221; overruling *L. and N. W. R. Co. v. Smith*, 1 Macn. & Gord. 219; 19 L. J. (Ch.) 193; 13 Jur. 380; post, 224, note (b); and see *Sutton Harbour Improvement Co. v. Hitchins*, 21 L. J. (Ch.) 73, and *L. and N. W. R. Co. v. Bradley*, 6 Railw. C. 551; post, 225; *Pinchin v. London and Blackwall R. Co.*, 1 Kay & J. 34; 5 De Gex, M. & Gord. 851.

Plea, that no damage has been sustained.

section, the company may allege as a defence, to an action on the award or inquisition, that the claimant has sustained no injury for which the statute has given compensation (*m*). In a very similar case, where an act provided that, in case of dispute “*as to the amount of any compensation*,” an arbitrator might be appointed to assess it, the Court held, that the jurisdiction of the arbitrator did not apply to cases where the liability to make any compensation at all was to be tried; and an award was set aside on that ground. Erle, J., in delivering judgment, said, that “by the 68th section of the Lands Clauses Consolidation Act, which had been referred to during the argument, the question, whether lands had been injuriously affected or not, was left by that section to the ordinary courts;” and Crompton, J., agreed that it would be a good traverse to an action brought on that section, to say that no damage had been sustained (*n*).

II. Powers to take temporary Possession of Lands.

The company are also authorized to take temporary possession of lands which abut on the intended line of railway; but this power is confined within certain specified limits, and mansion-houses and other inclosed property are protected from such an invasion.

8 & 9 Vict. c. 20,
s. 32, App. 81.

By the Railways Clauses Consolidation Act it is enacted, that, subject to the provisions therein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, without making any previous payment, tender or deposit, to enter upon any lands within the prescribed limits, or, if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not

(*m*) See pleas to this effect, *Glover v. North Staffordshire R. Co.*, 20 L. J. (Q. B.) 376; 16 Q. B. 912; *Chapman v. Monmouthshire R. and Canal Co.*, 27 L. J. (Exch. 97); 1 H. & N. 267; *Mortimer v. South Wales R. Co.*, 28 L. J. (Q. B.) 129; 1 E. & E. 375; *Read v. Victoria Station, &c., R. Co.*, 32 L. J. (Exch.) 167; 1 H. & C. 826. See also *Barber v. Nottingham and Grantham R. Co.*, 33 L. J. (C. P.) 193; 15 C. B. (N. S.) 726.

(*n*) *R. v. Metropolitan Commissioners of Sewers*, 22 L. J. (Q. B.) 234; 1 E. & B. 694. Arbitrators and juries have no jurisdiction to determine, if damages alleged to have been sustained are such as give a legal right to demand compensation. *R. v. L. and N. W. R. Co.*, 3 E. & B. 443; *Chapman v. Monmouthshire R. and Canal Co.*, ubi supra; *Barber v. Nottingham, &c., R. Co.*, ubi supra. If no such damage has, in fact, been sustained, the company will not be

damnified by refusing to summon a jury, or appoint an arbitrator when they are required to do so, because when an action is afterwards brought to recover the sum demanded, it is, as we have seen, a good plea that no damage has been sustained by the plaintiff. But as exorbitant claims may be made under sect. 68, in cases where the claimant's legal right to demand compensation may be extremely doubtful, the company would become liable to pay the whole of the claim, on failing to establish the plea that no legal damage whatever has been sustained. In such cases, therefore, the proper course seems to be, that the company should take the necessary steps to have the compensation assessed; and then appear before the arbitrators or jury, under protest, if necessary, and contest the claim. See also *Read v. Victoria Station, &c., R. Co.*, ubi supra.

being a garden, orchard or plantation attached or belonging to a house, nor a park, planted walk, avenue or ground ornamentally planted, and not being nearer to the mansion-house of the owner of any such lands than the prescribed distance, or, if no distance be prescribed, then not nearer than five hundred yards therefrom (a), and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith thereafter mentioned, and to use the same for any of the following purposes, (that is to say);

Powers to take temporary Possession of Lands.

8 & 9 Vict. c. 20, s. 32.

For the purpose of taking earth or soil by side cuttings therefrom ;

For the purpose of depositing spoil thereon ;

For the purpose of obtaining materials therefrom, for the construction or repair of the railway, or such accommodation works as aforesaid ; or

For the purpose of forming roads thereon, to or from or by the side of the railway ;

And, in exercise of the powers aforesaid, it shall be lawful for the company to deposit, and also to manufacture and work upon such lands, materials of every kind used in constructing the railway, and also to dig and take from out of any such lands any clay, stone, gravel, sand or other things that may be found therein, useful or proper for constructing the railway or any such roads as aforesaid, and, for the purposes aforesaid, to erect thereon workshops, sheds, and other buildings of a temporary nature : *provided* always, that nothing in this act contained shall exempt the company from an action for nuisance or other injury, if any, done in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid : *provided also*, that no stone or slate quarry, brick-field, or other like place, which, at the time of the passing of the special act, shall be commonly worked or used for getting materials therefrom, for the purpose of selling or disposing of the same, shall be taken or used by the company, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

And, by sect. 33,—In case any such lands shall be required for spoil banks or for side cuttings, or for obtaining materials for the construction or repair of the railway, the company shall, before entering thereon (except in the case of accident to the railway,

Company to give notice previous to such temporary possession.

(a) In *Webb v. Manchester and Leeds R. Co.*, 1 Railw. C. 599, Lord Cottenham said, when called upon to construe a similar clause in a railway act, "The powers given to companies are so large, and frequently so injurious to the interests of individuals, that I think it is the duty of every court to

keep them most strictly within those powers ; and, if there be any reasonable doubt as to the extent of their powers, they must go elsewhere and get enlarged powers, but they will get none from me by way of construction of the act."

*Powers to take
temporary Posses-
sion of Lands.*

8 & 9 Vict. c. 20,
s. 33.

requiring immediate reparation), give three weeks' notice in writing to the owners and occupiers of such lands, of their intention to enter upon the same for such purposes (*p*); and, in case the said lands are required for any of the other purposes hereinbefore mentioned, the company shall (except in the cases aforesaid) give ten days' like notice thereof; and the company shall, in such notices respectively, state the substance of the provisions hereinafter contained, respecting the right of such owner or occupier to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof, as the case may be (*q*).

The mode of serving the above-mentioned notices is prescribed by sect. 34.

Owner, &c. may
object to lands
being used for
temporary pur-
poses.

If lands are required for spoil banks, side cuttings, or for obtaining materials, the owner or occupier may, by giving notice in writing to the company within ten days after he has received the before-mentioned notice from the company, object to the company using the lands; and the objection may be, that the lands or materials are essential to be retained by the owner (*r*), or that other contiguous lands would be more fitting to be used (*s*): (Sect. 35.) If the former objection be made, two justices may inquire into the truth of such ground of objection, and, for special reasons to be assigned, may order that the lands shall not be used by the company; and, after service of the justices' order on the company, they cannot take or use, without the previous consent of the owner, any of the lands or materials which they are ordered not to take or use: (Sect. 36.) If the objection be, that other contiguous lands which the company are authorized to use, would be more fitting to be used, then the owners and occupiers of such contiguous lands, and the company, may be summoned to appear before two justices, and they may determine, summarily, which of the lands shall be used: (Sect. 37.) Or the justices may adjourn the inquiry, and summon any other person who may appear to have lands which the company are authorized to take, and then finally determine which lands shall be used: (Sect. 38.) The owner or occupier of lands required for spoil banks, side cuttings, for obtaining materials, or for forming roads, may require the company to execute a bond, with sureties, conditioned for the payment of compensation; and a justice may decide any difference as to the amount of the penalty, &c.: (Sect. 39.) Before any lands or roads can be used, the company are required, on the request of the owner or occupier, to fence off the lands and roads, and to put up convenient

(*p*) The notice ought to point out for what purposes the lands are required, as in the form, Appendix. *Poynder v. Great Northern R. Co.*, 5 Railw. C. 201; 16 Sim. 3.

(*q*) See forms, post, App.

(*r*) See forms, post, App.

(*s*) See forms, post, App.

gates; and, in case of difference, two justices may decide what fences and gates are necessary: (Sect. 40.) If lands are taken for the purpose of getting materials, the company must work the same in such manner as the surveyor or agent of the owner may direct, or, in case of disagreement, as a justice may direct: (Sect. 41.) In all cases where the company enter upon lands to make spoil banks, side cuttings, or to take materials, the owners or occupiers of the lands, or parties having such estates or interests therein as, under the Lands Clauses Consolidation Act, would enable them to convey the lands to the company, may, at any time during the possession of such lands by the company, and before such owners or occupiers have accepted compensation from the company in respect of such temporary possession, serve a notice in writing on the company (*t*), requiring them to purchase the said lands, or the estates and interests therein, capable of being sold and conveyed by them respectively; and in such notice such owners or occupiers shall set forth the particulars of their estate or interest in such lands, and the amount of their claim in respect thereof; and the company shall thereupon be bound to purchase the said lands, or the estate and interest therein capable of being sold and conveyed by the parties serving such notice: (Sect. 42.)

Powers to take temporary Possession of Lands.

8 & 9 Vict. c. 20, s. 41.

Owners may, in certain cases, require the company to purchase lands required for temporary purposes.

Sect. 42.

If any of the cases aforesaid, where the company shall not be required to purchase such lands, and in all other cases where they shall take temporary possession of lands by virtue of the powers in the acts granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature, which he may sustain by reason of their so taking possession of his lands, and shall also, from time to time, during their occupation of the said lands, pay half-yearly to such occupier or to the owner of the lands, as the case may require, a rent to be fixed by two justices, in case the parties differ, and shall also within six months after they shall have ceased to occupy the lands, and not later than six months after the expiration of the time by the special act limited for the completion of the railway, pay to such owner and occupier, or deposit in the Bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers in the acts granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands: (Sect. 43.)

Compensation to be made for temporary occupation.

Sect. 43.

The amount of compensation in all the above-mentioned cases is

(*t*) See forms, post, App.

Powers to take temporary Possession of Lands.

determined, and the money applied, in the manner provided by the Lands Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions of that act: (Sect. 44.) This subject is treated of in another part of this Chapter (*u*).

Entry on lands to repair accidents, &c., by the authority of the Board of Trade.

After a railway is completed, the company may, in certain cases, enter on adjoining lands for the purpose of preventing accidents and of repairing the railway; and in some cases, lands not included in the schedules annexed to the special act may be taken under the compulsory powers of the act; but in all these cases a certificate from the Board of Trade must be obtained by the company in accordance with 5 & 6 Vict. c. 55, ss. 14 and 15 (*x*).

III. *Powers to take temporary Possession of Roads.*

Powers to take temporary possession of private roads within 500 yards of the railway.

8 & 9 Vict. c. 20, s. 30, App. 81.

The company are also authorized to make a temporary use of certain private roads. By the Railways Clauses Consolidation Act it is enacted, that, subject to the provisions therein, and in the special act contained, it shall be lawful for the company at any time before the expiration of the period by the special act limited for the completion of the railway, to enter upon and use any existing private road, being a road gravelled or formed with stones or other hard materials, and not being an avenue or a planted or ornamental road, or an approach to any mansion-house within the prescribed limits, if any, or, if no limits be prescribed, not being more than five hundred yards distant from the centre of the railway, as delineated on the plans; but, before the company can enter upon or use any such existing road, they must give three weeks' notice (*y*) of their intention to the owners and occupiers of the road, and of the lands over which the same shall pass, and must in such notice state the time during which, and the purposes for which, they intend to occupy such road; and such compensation must be paid as may be agreed upon, or, in default of agreement, then the amount is to be settled by two justices in the same manner as compensation not exceeding 50*l*.

Power to owners to object that other roads should be taken. Sect. 31.

But the owners and occupiers of any such road, and of lands over which the same passes, may, within ten days after the service of the aforesaid notice, by notice in writing to the company object to the company making use of the road, on the ground that other roads, such as the company are hereinbefore authorized to use for the purposes before mentioned, or that some public road, would be more

(*u*) See post.

(*x*) See post, Chapter IX. Sect. 5, and

App. 13.

(*y*) See form, App.

fitting to be used; and, upon the objection being so made, such proceedings may be had as have been already mentioned with respect to lands temporarily occupied by the company, in respect of which three weeks' notice is required to be given (*z*), and in the same manner as if, in the provisions relative to such proceedings, the word "road" or "roads," or the words "road and the land over which the same passes," as the case may require, had been substituted in such provisions for the word "lands:" (Sect. 31.) The powers given to the company to cross turnpike and other roads are hereafter described (*a*).

Temporary Occupation of Roads.

8 & 9 Vict. c. 20, s. 31.

If the company cross, raise, cut through, sink or use any part of any road, public or private, so as to render it impassable for, or dangerous, or extraordinarily inconvenient, to passengers or other persons, or carriages, they are required, before the commencement of any operations, to cause a sufficient road to be made, instead of the road to be interfered with, and to maintain such road (*b*) (Sect. 53); and, in default of making the substituted road, the company are liable to a heavy penalty (*c*) (Sect. 54); and any person sustaining special damage may maintain an action on the case: (Sect. 55). If the road interfered with as above mentioned can be restored, compatibly with the formation and use of the railway, the company are required to restore it; if it cannot be restored, then the company are required to cause some other sufficient substituted road to be put into a permanently substantial condition; and the former road must be restored, or the substituted road provided, within a certain period, which is prescribed: (Sect. 56.) If any such road be not restored, or the substituted road completed, within the prescribed period, the company forfeit to the trustees, commissioners, surveyors, or other person having the management of the road (*d*) interfered with by the company, if a public road, or if a private road, to the owner thereof, 5*l*. for every day during which such road shall not be restored, or the substituted road completed; and the justices may order the

Before roads interfered with others to be substituted.

Sect. 53.

Restoration of roads.

Sect. 56.

(*z*) See ante, 203.

(*a*) Post, Chapter VIII., Sect. 3.

(*b*) See the cases on this subject, post, Chapter VIII., Sect. 7.

(*c*) See *Mann v. Great Southern and Western R. Co.*, 9 Ir. C. L. R. 105. If a private way be obstructed by the railway works, the remedy of the party injured is to sue for a penalty, under section 54, or to bring an action under section 55 of the Railways Clauses Act for special damage sustained, or he may proceed to recover compensation in the manner pointed out in the acts. It is clear that an action on the case for the obstruction cannot be maintained. *Watkins v. Great Northern R. Co.*, 15 Jur. 1127; 20 L. J. (Q. B.) 391;

16 Q. B. 961, distinguishing *R. v. Scott*, 3 Q. B. 543, where an injunction was refused. See *Hatfield v. Manchester R. Co.*, 12 Jur. 1083. The above sections, however, do not apply where the object of the special act is to change the nature of the road. *Tanner v. South Wales R. Co.*, 5 E. & B. 618.

(*d*) The owner of the soil of a road, who occasionally repaired it and the sewers below it, and who had dedicated the road to the use of the public, although it had never been adopted or repaired by the parish, is not a person having the management of the road within the meaning of the above clause. *R. v. Wilson*, 21 L. J. (Q. B.) 281; 16 Jur. 973; 18 Q. B. 348.

Temporary Occupation of Roads.

Restoration of roads.

Company are required under a penalty to repair roads used by them.

8 & 9 Vict. c. 20, s. 58.

whole, or any part, of the penalty to be laid out in executing the work in respect whereof such penalty was incurred: (Sect. 57.)

If in the course of making the railway the company shall use or interfere with (*e*) any road, they shall from time to time make good all damage done by them to such road; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, such question shall be referred to the determination of two justices; and such justices may direct such repairs to be made in the state of such road, in respect of the damage done by the company, and within such period, as they think reasonable, and may impose on the company for not carrying into effect such repairs any penalty, not exceeding 5*l.* per day, as to such justices shall seem just (*f*); and such penalty shall be paid to the surveyor, or other person having the management of the road interfered with by the company, if a public road, and be applied for the purposes of such road, or if a private road, the same shall be paid to the owner thereof: provided always, that in determining any such question with regard to a turnpike road, the said justices shall have regard to, and shall make full allowance for, any tolls that may have been paid by the company on such road in the course of the using thereof: (Sect. 58.)

Sufficiency of an order and conviction under this section.

An order of justices, made under this section, need not point out the particular repairs required to be done; it is sufficient to state what length of road has been injured, and to direct that portion to be repaired; and one conviction for neglecting to obey an order may, by reference to the order, include several roads situate in one parish, and need not impose a separate penalty for the non-repair of each road; nor is it necessary to refer to the special act in the conviction; it is sufficient to allege that the conviction is by virtue of the Railways Clauses Consolidation Act (*g*).

IV. *On Compensation.*

By what parties compensation may be claimed.

Having thus pointed out the powers of the company,—1st, to take and purchase lands; 2nd, to take temporary possession of lands; and 3rd, to take temporary possession of roads,—we proceed to make some further remarks on the subject of the compensation which may be claimed under the statutes (*h*), by parties who are interested in the

(*e*) The company are liable under this section for damage done to a road by their contractors, *West Riding and Grimsby R. Co. v. Wakefield Local Board of Health*, 33 L. J. (M. C.) 174.

(*f*) See a form of an order and conviction, *L. and N. W. R. Co. v. Wetherall*, 20 L. J. (Q. B.) 337; 15 Jur. 247.

(*g*) *L. and N. W. R. Co. v. Wetherall*,

ubi supra. Whether those portions of a road belonging to a county bridge, and repairable by the county, are within the provisions of this section, was discussed, *Ex parte Exeter Road Trustees*, 16 Jur. 649.

(*h*) As to the mode of assessing the amount of the compensation to be paid, see post, Chapter VI.

property so taken, or who are otherwise injuriously affected by the construction of the railway.

Compensation.

We have already seen that the statutes give compensation, in all cases, to the owners of lands which are taken and purchased by the company under their compulsory powers (*h*), and also under section 68 of the Lands Clauses Consolidation Act, in respect of lands or any interest therein which have been taken for, or injuriously affected by, the execution of the company's works (*i*).

And by the Railways Clauses Consolidation Act, sect. 6, it is enacted, that in exercising the power given to the company by the special act to construct the railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in that act and the Lands Clauses Consolidation Act; and the company shall make to the *owners and occupiers* of, and *all other parties interested* in, any lands taken or used for the purposes of the railway, or *injuriously affected* by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, *as regards such lands*, of the powers by that or the special act, or any act incorporated therewith, vested in the company. And by sect. 16, which authorizes the company to execute every description of works necessary for making, and repairing, and using the railway (*k*), it is enacted, that, "in the exercise of the powers by that or the special act granted, the company shall do as little damage as can be, and shall make full satisfaction in manner therein, and in the special act, and any act incorporated therewith, provided, *to all parties interested*, for all damage by them sustained by reason of the exercise of such powers.

8 & 9 Vict. c. 20,
s. 6, App. 75,

In all cases where lands are taken, it is laid down as a general rule by the Lands Clauses Consolidation Act (*l*), sect. 63, that, in estimating the purchase-money or compensation, regard shall be had by the justices, arbitrators, or surveyors (*m*), as the case may be, not only to the value of the land to be taken, but also to the damage, if any, to be sustained by any owner of the lands, by reason of the severing of the lands taken from the other lands of the owner, or otherwise injuriously affecting such other lands.

General rule for
assessing com-
pensation.

Moreover, it is provided by the Railways Clauses Act, 1863 (26 & 27 Vict. c. 92, s. 20, App.), that, where the time limited by the special act for the exercise of powers of compulsory purchase of lands,

Compensation for
additional damage
where time
extended.

(*h*) Ante, 180.

(*i*) Ante, 193.

(*k*) Ante, 168.

(*l*) 8 & 9 Vict. c. 18, s. 63, post, App.

55.

(*m*) This provision does not refer to cases

H.

where compensation is assessed by a jury: the same rule seems, however, to be applicable, and it is usual to observe it. See the evidence taken before the House of Lords on this subject at the end of this Chapter.

Compensation.

26 & 27 Vict.
c. 92, s. 20.

or of powers for construction of the railway and works, is extended by a special act incorporating that part of that act, the justices, arbitrators, umpires or juries, as the case may be, who award or assess the compensation to be made by the company to the owners or occupiers of, or other persons interested in, lands taken or used for the purposes of the railway and works, or injuriously affected by the construction thereof, shall, in estimating the amount of such compensation, have regard to and assess compensation for the additional damage (if any) sustained by those owners, &c., by reason of the extension of time.

Compensation for
lands omitted to
be purchased by
mistake (o).

8 & 9 Vict. c. 18,
s. 124.

It is also provided by the Lands Clauses Act, 1845, that if, after the company have taken possession of lands, any party shall appear to be entitled to an interest therein, and, through inadvertence, no compensation has been paid to him, the company may, within a time limited, pay compensation for the lands, and also for the loss of the mesne profits thereof; the amount of compensation to be agreed upon or awarded in like manner as if the company had purchased such interest before entry upon the land. The compensation and mesne profits must be assessed according to the value of the lands at the time they were entered upon.

Sect. 125.

Compensation for
damages sus-
tained by the
temporary occu-
pation of lands.

8 & 9 Vict. c. 20,
s. 43.

With respect to the compensation which may be claimed for damages sustained by reason of the temporary occupation of lands, under the powers conferred on the company (*p*), the Railways Clauses Consolidation Act provides, that in such and all other cases where the company shall take temporary possession of lands, by virtue of the powers therein or in the special act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature, which he may sustain by reason of their so taking possession of his lands; and shall also, from time to time, during their occupation of the said lands, pay half-yearly, to such occupier, or to the owner of the lands, as the case may require, a rent, to be fixed by two justices in case the parties differ; and shall also, within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special act limited for the completion of the railway, pay to such owner and occupier, or deposit in the Bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage or injury, that may have been sustained by them, by reason of the exercise, as regards the said lands, of the powers therein or in the special act

(o) On this subject, see post, Chapter VII., Sect. 5.

(p) 8 & 9 Vict. c. 20, s. 32, ante, 202.

granted, including the full value of all clay, stone, gravel, sand and other things taken from such lands. And here it must be remembered, that if the lands have been temporarily occupied by the company for the purpose of making spoil banks or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, then the parties interested in such lands may waive their right to claim compensation under the above provision, and require the company to purchase the lands (*q*).

Compensation.
Compensation for damages sustained by the temporary occupation of lands.
8 & 9 Vict. c. 20, s. 42.

So, when the company avail themselves of the powers already mentioned (*r*) to use certain existing private roads, it is provided, that, before they use such roads, they must give notice of their intention (*s*), and pay to the owners and occupiers of the roads, and of the lands through which the same shall pass, such sum for the use and occupation of the road, either in a gross sum or by half-yearly instalments, as shall be agreed upon between the owners and occupiers respectively and the company, or, in case they differ, as shall be settled by two justices, according to the provisions of the Lands Clauses Consolidation Act (*t*).

Compensation where roads are temporarily occupied.
Sect. 30.

There are also special provisions in the Lands Clauses Act, with respect to the compensation to be paid to lessees for years, and to tenants from year to year. Thus, if any lands are comprised in a lease for a term of years, and a part only of such lands are required for the purposes of the railway, the future rent to be paid by the tenant for the lands which are not required is to be apportioned in the manner prescribed. And every such lessee is entitled to receive compensation for the damage done to him in his tenancy, by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Compensation to lessees for years. &c.
8 & 9 Vict. c. 18, s. 119, App. 67.

Sect. 120.

If any lands are in the possession of any person having no greater interest therein than as a tenant for a year, or from year to year (*u*), and if such person be required to give up possession of any lands so occupied by him (*x*) before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain; or, if a part only of such lands be required, compensation for the damage done to him in his tenancy, by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined

Tenants at will, &c.
Sect. 121.

(*q*) See ante, 205; and see the notice, &c. required in this case, post, App. tit. Forms.

(*r*) See ante, 206.

(*s*) See the form of this notice, post, App. tit. Forms.

(*t*) As to compensation for damage done to roads, see ante, 207; post.

(*u*) See cases of compensation to such tenants, post, 250.

(*x*) See form of notice, App. tit. Forms.

Compensation.

Tenants at will,
&c.

8 & 9 Vict. c. 18,
s. 121, App. 67.

Where greater
interest claimed,
lease to be pro-
duced.

Sect. 122.

Compensation in
respect of damage
done to mines.

8 & 9 Vict. c. 20,
s. 77, App.

by two justices, in case the parties differ about the same; and, upon payment or tender of the amount of such compensation, all such persons shall respectively deliver up any such lands in their possession required for the purposes of the special act.

If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest, under any lease or grant of any such lands, the company may require the party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the company, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation is to be considered as a tenant holding only from year to year, and is entitled to compensation accordingly.

Special provisions are also made with respect to the compensation which is to be paid when loss or damage is sustained by owners or lessees of mines, under or near the railway.

As it has already been stated (*y*), the company are not entitled to mines or minerals under lands purchased by them, except such part as shall be necessary to be used in the construction of the works, unless the same shall have been expressly purchased; and such mines are deemed to be excepted out of the conveyance. If the owner, &c., of mines under the railway, or within the prescribed distance therefrom, be desirous of working the same, he must give notice to the company, and the company may then make compensation for the mines, (the amount to be settled as in other cases of disputed compensation); and in that case the mines cannot be worked. If the company do not treat, after receiving the notice, the owner may work the mines in the manner particularly prescribed; and any damage or obstruction to the railway or works, by improper working of such mines (*z*), must be made good by the party who works the mines: (Sect. 79.) Airways, headways, gateways, or water levels, may be made by the owners of mines, in the manner prescribed:

(*y*) Ante, 171.

(*z*) Where a canal company sought to recover damages from the owners of a coal mine, the question turned on the construction of the Canal Act, and the court was of opinion, that the meaning of the act of Parliament in requiring coal owners to give notice to the company of their intention to work their mines within a certain distance of the canal, and the liberty given to the company to inspect the works, and to prohibit the owners, upon making compensation to them, from working within that distance, was for the purpose of enabling the company to purchase out the rights of the coal owners, if they thought their canal works likely to be endangered by the nearer approach of the miners; but, if the com-

pany declined the purchase, as they had done in this case, the coal owners were left to their common-law rights, as if no canal had been made, and they might take every part of their coal, in the same manner as they might have done before the act passed; their former rights in that respect not having been taken away by the act, which had only appropriated the surface of the land, and so much of the soil as was necessary for the cutting and making of the canal, leaving the coal, &c. to the owners, to be enjoyed in the same manner as before; and the Legislature had only given the landowners a compensation for so much of the soil as they had deprived them of. And the court said, this was not like the case

(Sect. 80); and the owners of the land through which they are made are entitled to receive compensation from the company: (Sects. 81, 82.)

Compensation.
Damage to mines.
8 & 9 Vict. c. 20,
s. 77 et seq.

The company are required, from time to time, to pay to the owner, lessee, or occupier (*a*) of any mines, extending so as to lie on both sides of the railway, all such additional expenses and losses (*b*) as shall be incurred by such owner, lessee, or occupier, by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner, and under such restrictions, as not to prejudice or injure the railway, and for any minerals not purchased by the company, which cannot be obtained by reason of making and maintaining the railway; and if any dispute or question arises between the company and such owner, lessee, or occupier, touching the amount of such losses or expenses, the same is to be settled by arbitration: (Sect. 81.)

The company are authorized, after notice, to enter mines, and to use all necessary means to discover the distance from the railway to the mines (Sect. 83); and if they are refused admission to the mines, a penalty is incurred by such refusal: (Sect. 84.) If mines are worked contrary to the aforesaid provisions, the company may require the owner to construct such works, and adopt such means, as may make the railway safe; and, in case of refusal, the company may themselves construct such works, and recover back the expenses thereof: (Sect. 85.)

The company are empowered to remove or displace water and gas-pipes; but they must make good all damage done to the property of the water or gas company by the disturbance thereof, and make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the mains, pipes or works of such water or gas company, or with the private service-pipes of any person supplied by them with water.

Injuries to water
and gas-pipes.
Sect. 21.

We now approach a question of great importance, i. e. for what kinds of injuries compensation may be demanded.

where damages were recovered against the late Earl of Lonsdale for undermining a person's house; for there the party claimed under a grant from the owner of the land, and the injury done was against the land-owner's own grant. *Wyrley Canal Co. v. Bradley*, 7 East, 372. See the cases collected, post, 229 et seq.

(*a*) A lessee of a coal mine was held to be entitled to compensation for the loss of

the profit which he would have made on the coal, if he had not been restrained by a canal act from working the colliery. *Barnsley Canal Co. v. Twibell*, 13 L. J. (Ch.) 434; post, 229; and see other cases, post, 230 et seq.

(*b*) As to what description of expenses and losses may be recovered, see *Dand v. Kingscote*, 2 Railw. C. 46.

Compensation.

Questions arising under the Consolidation Acts, as to compensation.

It may be observed, with reference to the provisions contained in the Consolidation Acts on the subject of compensation, that questions of considerable difficulty have arisen, and are likely to arise, as to their construction. It seems to have been the intention of the Legislature, to give full compensation to the owners and occupiers of, and all other parties interested in, *land taken or used for, or injuriously affected by*, the construction of the railway, for the value of such lands, and for all damage sustained by such owners, &c. It is, however, obvious that the language used in the statutes must be applied with some limitations; for it cannot be contended that railway companies are liable to make compensation for every injury, however remote such injury may be, which parties interested in lands may sustain, in consequence of the construction of the railway (c). The cases in which the right to recover compensation exists, and the principles upon which that right depends, are now better understood than they were when this work was first published. The Courts had not then been called upon to construe the compensation clauses in the Consolidation Acts, which were but recently passed. Under these circumstances, and hoping to throw light on the subject, the author collected and printed at length most of the decisions to be found in the Books which had reference to other Statutes containing compensation clauses, although those decisions relate chiefly to Canal and Dock Acts. A great number of cases have, however, since been decided upon the construction of the compensation clauses in the Consolidation Acts. It has therefore been thought better, with a view both to brevity and perspicuity, to endeavour in the present edition to lay before the reader the effect of all the decisions, as well upon Canal and Dock Acts as upon the compensation clauses in the Consolidation Acts, without giving the cases themselves at full length. In some cases, extracts are given from judgments for the convenience of reference. Some of these cases, it must be remembered, were determined upon the construction of provisions contained in particular acts of Parliament.

Arrangement of compensation cases.

The cases are considered in the following order:—

1. *Compensation where lands, &c., have been actually taken for, or injuriously affected by, the construction of the railway.*
2. *Compensation to lessees of lands.*
3. *Compensation in other cases (d).*

(c) See Lord Denman's observations in *R. v. Eastern Counties R. Co.*, 2 Q. B. 347, post, 219; and *Chamberlain v. West End of London and Crystal Palace R. Co.*, 31 L. J. (Q. B.) 201; *S. C.*, aff. in Exch. Ch., 32 L. J. (Q. B.) 177; 2 Best & S. 605.

(d) The Report made by a Select Committee of the House of Lords, in the session

of 1845, on the mode of assessing compensation, is also annexed to the end of this Chapter, together with such extracts from the evidence taken before that committee, as appear to point out the principles adopted by surveyors in ascertaining the amount of compensation for injuries done to lands.

1 *Compensation where Lands, &c., have been actually taken for, or injuriously affected by, the Construction of the Railway.* Compensation.

Where lands (*e*), or any interest therein, are actually “taken” by a railway company for the construction of their railway or works, few questions can arise except with regard to the *amount* (*f*) of compensation to which the owner is entitled; and that is a question to be decided by the statutory tribunal to which it has been referred by the legislature. There are few, if any, reported decisions upon the subject. The reader will, however, find considerable information on the principles adopted by surveyors in assessing compensation for injuries done to lands, in the report and evidence given before the Lords’ Select Committee in the Session of 1845, which are printed at the end of this Chapter. Lands “taken.”

In a case (*g*) which occurred before the passing of the Lands Clauses Act, where 200 acres of titheable land were taken and converted into a canal under a private act of Parliament, it was held that, as the act contained no express provision in favour of the tithe-owner, he was not entitled to compensation for the tithes which would otherwise have issued from the land so appropriated. And Little-dale, J., said:— Tithe owner not entitled.
R. v. Commissioners of Nene Outfall.

“This is the first application I remember for a compensation for loss of tithe, sustained by a rector by reason of land having been converted to a purpose which rendered it incapable of producing tithe. If the legislature had intended that the rector should have such compensation, they would undoubtedly have introduced into the act an express provision for that purpose. Without an express enactment, it is quite clear that the rector can have no right to such compensation (*h*). It is

(*e*) “Lands” extend to messuages, lands, tenements and hereditaments of any tenure; see the interpretation clause, 8 & 9 Vict. c. 18, s. 3, post, App. 46.

(*f*) We shall hereafter see that a sheriff’s jury have no jurisdiction to entertain questions of right; post, Ch. VI., Sect. 4.

(*g*) *R. v. Commissioners of Nene Outfall*, 9 B. & C. 875; and see *R. v. London Docks Co.*, 5 A. & E. 163, post.

(*h*) Such express provisions are sometimes introduced. Thus, where a railway company were authorized to pull down houses in St. Olave’s, London, it was provided by the statute for the indemnity of the rector, in respect of his right to the tithes of 2s. 9d. in the pound on the removed buildings, that the company should pay to the rector tithes in respect of the houses removed, according to the last assessment to Lady-day preceding, equal to the loss sustained by want of occupiers, until new houses should be erected, of such annual value that the tithes thereon should be equal to the tithes payable on the buildings removed; such payments to diminish in proportion to the yearly sums actually payable for tithes on the new buildings.

The company pulled down houses, on some of which the tithes of 2s. 9d. in the pound were paid on the full annual value, on others the same had been paid by agreement, between the rector and the occupier, at less than the full annual value, and several on which the tithes had been wholly or partly remitted by the rector. It was decided in the House of Lords (reversing a decree of Wigram, V.C., 5 Hare, 605), that the object of the act was only indemnity to the clergy; that therefore the clergy were entitled to receive only what they would have received if the railway company had never interfered with the premises; that the company was liable to pay in respect of houses removed (where no others had been built in their places) such sums as were actually paid to the rector, whether by agreement or otherwise, up to the 25th of March, 1839; that the amount before then agreed upon between the rector and the occupant, and paid by the occupant, constituted the “assessment” within the meaning of the act; and that the amount of compensation must be measured thereby; and further, that, where new houses had been built and occupied, the company was

Compensation.

insisted, that, the right of the rector to take tithe being an incorporeal hereditament, he is entitled to compensation, because he is a person interested in an hereditament. I think it is not a hereditament within the meaning of that word in this act of Parliament. It is true that he may have sustained damages by reason of the commissioners having taken the land, and thereby rendered it incapable of producing tithe. That is not a damage which the law considers as constituting any injury to the rector. There must be a damage accruing from the wrongful act of another to constitute a civil injury. If the owner of the land had suffered it to lie waste, and thereby rendered it incapable of producing tithe, the rector would sustain a damage, yet he could not maintain any action against the landowner, because the damage would not have been caused by any wrongful act. The commissioners have probably purchased the soil from the former owner, and thereby acquired the rights of owners. If that be so, they are entitled to use the land in such a manner that it shall not produce tithe."

Lands, &c., injuriously affected.

A great number of cases have arisen since the Lands Clauses Act, where lands, &c., have been "*injuriously affected*," and to these it is now proposed to direct the reader's attention; first premising that it may be considered perfectly clear that where a company have power to execute works injuriously affecting lands, &c., upon making compensation, they may proceed to commence their works *before* making or tendering compensation (*i*).

General rule.

*Caledonian R. Co.
v. Colt.*

"It is well settled," said Lord Campbell, in a recent case (*k*) in the House of Lords, "that the statutory tribunal, which the legislature has provided where losses are sustained in the formation of railways, is only established to give compensation for losses sustained in consequence of what the railway company may *do lawfully* under the powers which the legislature has conferred upon them; and that for anything done *in excess* of those powers, or *contrary* to what the legislature in conferring those powers has commanded, the proper remedy is a common law action in the common law courts." Such an *action*, however, can only be sustained by an individual who has actually sustained damage by the company exceeding their powers. If he has merely reason to apprehend that he will sustain damage by the company exceeding their powers, he may file a bill in equity for an injunction. But if he has sustained no damage, and there is no reason to apprehend that he will sustain damage, notwithstanding his being nearer to the possible cause of injury than the rest of the public, he has no peculiar position or claim to entitle him to become the redresser of a public grievance, or to complain of the disregard of

entitled to be credited (in reduction of its general liability to make compensation under the act) with the sums which had become payable in respect of such new houses, and not merely with those which had been actually received therefrom. *London and Blackwall R. Co. v. Letts*, 3 H. L. C. 470. Tithe rent charges are now recover-

able from a company, by 7 & 8 Vict. c. 85, s. 22, post, App. 23.

(*i*) *Lister v. Lobley*, and *cas. cit. supra*, 201, note (*k*).

(*k*) *Caledonian R. Co. v. Colt*, 3 M.Q. 838; *Broadbent v. Imperial Gas Co.*, 26 L. J. (Ch.) 276; 7 De Gex, M. & Gord. 436; 29 L. J. (Ch.) 377; 7 H. L. C. 600.

the provisions of an act of Parliament. Proceedings in such case must be taken on the part of the public by indictment; or in equity by information by the Attorney-General (*l*).

Compensation.

The principles above laid down are always acted upon. In order, therefore, to ascertain whether any particular injury is the subject of compensation or of an action, the first question to be decided is, whether or not the act causing the injury is one which the railway company may *lawfully* do under their acts of Parliament. If it is a lawful act, compensation must be sought under the compensation clauses. If it is not lawful, redress must be sought by an action. But, as we shall presently see, compensation can only be claimed from the company when the circumstances are such that, if the act causing the injury had not been authorized by act of Parliament, the company would have been liable to an action.

Act causing injury must be authorized by statute.

Where the act causing the injury is one which the company may lawfully do, the next question which arises is, whether the injury done is of such a nature as to entitle the claimant to compensation, as it by no means follows that every person injured by the lawful acts of a railway company is entitled to compensation. Where, for instance, the damage or injury is common to all the Queen's subjects, no one of them can maintain an action (*m*), but if any one has sustained private and particular injury beyond the rest of the public, inasmuch, as in respect of that injury he might, but for the act of Parliament, have maintained an action, so, under the act of Parliament, which legalizes the act complained of, he is entitled to compensation (*n*).

And injury must give cause of action, but for statute.

But let us proceed to consider the cases on these subjects. By a local act, 7 & 8 Geo. 4, c. lxxxii, a waterworks company were empowered to make and continue waterworks, weirs and other like works in the parish of L., and to enter upon all lands, &c., specified in the plans and books of reference, and to do all other things necessary for making the waterworks. A plan describing the line of the works and the lands, and books specifying the owners, were to remain with the clerk of the peace. The company were also empowered to agree for the purchase of lands, &c.; and tenants for life, &c., and owners of lands, through which the works were to pass, were to receive satisfaction for the value of the lands, and the damages sustained in making the works. T. was tenant for life of a water-mill in L., on the river Leen. In 1826 the company were in possession of works for raising water from the Leen. The local act passed in

R. v. Nottingham Old Water Works Co.

Removing a weir.

(*l*) *Ware v. Regent's Canal Co.*, 28 L. J. (Ch.) 153; 3 De G. & J. 212; 23 Beav. 575, post, 243.

(*m*) Post, 234.

(*n*) See *Chamberlain v. West End of London and Crystal Palace R. Co.*, 31 L. J. (Q. B.) 201; aff. in Exch. Ch., 32 L. J. (Q. B.) 177; 2 Best & S. 605.

Compensation.

*R. v. Nottingham
Old Water Works
Company.*

Removing a weir.

1827. In 1830 the company removed a weir, which had been placed across the river, to a part of the river higher up, and at the same time heightened the weir, in consequence of which the working of the mill was obstructed, and the value of the property lessened. In answer, it was sworn that neither the new weir nor the site was referred to in the plans or books of reference; that none of the plans or books showed that the company sought to obtain the power of changing the site of the weir, or raising it, or in any way altering the height of the water in the Leen, or diminishing the power or value of the mill. It was not, however, denied that the parts of the river Leen on which the mill and the new weir respectively stood were comprehended in the plans.—It was held that the owner of the mill was entitled to compensation, and Lord Denman said:—The erection of this weir seems directly within the powers given by the act; and the act might be pleaded by the company in justification. This appears to be the very case contemplated by the act. The other judges concurred.

*R. v. Eastern
Counties R. Co.*
Lowering public
road.

In *R. v. Eastern Counties R. Co. (o)*, which was argued upon a return to a mandamus, requiring the defendants to assess compensation to a landowner, where a public road adjoining the land of the applicant was lowered by the defendants under the powers of their special act, whereby access to the land was impeded, and additional fences rendered necessary; it was held that the landowner was entitled to compensation, although none of his land had been taken for the purposes of the act. And Lord Denman said:—

“The point is, whether the compensation clause in sect. 29 be large enough to include the case of the applicant, none of whose land has been used by the company (*p*). It is observable, that no question arises upon sect. 9, which empowers the company to conduct their undertaking, their powers being, not only to take land, but also to alter, raise or lower any roads or ways for their convenience, ‘making full satisfaction, in manner hereinafter mentioned, to all persons,’ &c. ‘interested in any lands which shall be taken, used, or injured, for all damages by them sustained in or by reason of the execution of the act.’ Upon which clause it is important to remark, first, that it in terms comprehends cases of injury independent of taking land; and next, that it is assumed that the satisfaction to be so

(*o*) 2 Q. B. 347; S. C., 2 Railw. C. 736. See also *Chamberlain v. West End of London and Crystal Palace R. Co.*, supra, note (*n*).

(*p*) The argument urged on behalf of the defendants in this case was, that the damage and injury complained of were a necessary consequence of acts which the statutes authorized the company to do, and that in such cases no action will lie. The leading cases on these points are *Governor of British Plate Manufacturers v. Meredith*, 4 T. R. 794; *Boulton v. Crowther*, 2 B. & C. 703; and see *Pilgrim v. Southampton and Dorchester R. Co.*, 7 C. B. 205; and Lord Truro’s re-

marks in *L. and N. W. R. Co. v. Bradley*, 6 Railw. C. 551, post, 225. It will, however, be seen that the ground of distinction between this class of cases and those which have been decided on the Consolidation Acts is, that, by the latter, the companies authorized to construct the works are required, in certain cases, to make compensation for damages sustained by the execution of their works; and the real difficulty is to define with exact precision the kinds of injuries which fall within 8 & 9 Vict. c. 18, s. 68, and 8 & 9 Vict. c. 20, s. 6,—a matter still left in considerable obscurity.

made (which, if the parties cannot agree, must refer to the compensation clause) is to extend to all the cases of injury enumerated, one of which, as we have just observed, is injury to any person, whether his land be taken or not. It is observable also, that the 36th section also plainly refers to cases wherein a jury may be summoned to inquire into 'loss or injury' 'sustained, or supposed to be sustained, in consequence of the execution of any of the powers of this act,' without any mention of the taking of land, provided a certain notice by the claimant has been previously given. It now remains for us to consider whether, although the alleged injury be within the 9th section, and it is there assumed that such injury is within the compensation clause, the language is so restricted as necessarily to exclude it from that clause. The language of it (sect. 29) is, 'And for settling all differences which may arise between the said company and persons interested in any lands which shall be taken, used, damaged or injuriously affected by the execution' of the act, it is enacted, that 'if any of the parties entitled to receive such purchase-money, or other compensation as aforesaid, shall refuse to accept such purchase-money as shall be offered,' a jury is to be summoned, and such jury 'shall inquire of and assess, and give a verdict for the sum of money to be paid for the purchase of such lands, and also the sum of money to be paid by way of compensation, either for the damages which shall before that time have been done or sustained as aforesaid, or for or by reason of the severing or dividing the same from other lands, whereof, wherein or whereto any such 'persons as aforesaid shall be seised, possessed of, or interested in.' Then follows, 'which satisfaction, recompence or compensation for such damage or loss shall be inquired into and assessed separately and distinctly from the value of the lands so to be taken or used as aforesaid.' Now it must be admitted, with reference to this part of the section, that what the jury is specially directed to find is applicable to the case of land taken, and of some ulterior damage thereupon. And the argument is, that, because that precise injury is specially provided for, all others are virtually excluded. On the other hand, it is to be observed, that the words 'damaged or injuriously affected' may, and we think ought, to extend to injuries mentioned in the 9th section, and to this injury amongst the rest. We also think, that where the purpose to give compensation in such a case has been so clearly expressed, every fair intendment ought to be given to effectuate that intention. Before we conclude, we shall advert to an argument much pressed upon us,—that, if we make this rule absolute, any injury to land, at any distance from the line of railway, may become the subject of compensation. If extreme cases should arise, we shall know how to deal with them; but, in the present instance, the alleged injury is to land adjoining a road which has been 'lowered' under the provisions of the act, and which is therefore land injuriously affected by an act expressly within the powers conferred upon the company. A peremptory mandamus must therefore be awarded."

Compensation.
R. v. Eastern
Counties R. Co.
Lowering public
road.

Upon similar principles (q), in a case in which the plaintiff occupied a cottage and a small piece of land on a level with and abutting on a public high road, from which a short way or passage over the plaintiff's land afforded access to his cottage, and a railway company, in the execution of the works of their railway, lowered the public high road seven feet, leaving the plaintiff's land and cottage on the edge of a precipice of that height, and thereby obliging the plaintiff to make use of a step-ladder in order to obtain access from the public

Moore v. Great
Southern and
Western R. Co.

(q) *Moore v. Great Southern and Western R. Co.*, 10 Ir. C. L. Rep. 46 (1859).

Compensation.
Moore v. Great Southern and Western R. Co.
 Lowering public road.

high road to the way or passage leading over his land to his cottage; it was held by the Court of Exchequer Chamber in Ireland, that the injury complained of by the plaintiff, being an injury of a permanent nature to his land, was the subject of compensation under the Railway Clauses Consolidation Act, 1845, s. 6, and 14 & 15 Vict. c. 70, and that an action was not maintainable.

Tuohey v. Great Southern and Western R. Co.
 Raising public road.

And, upon the authority of that decision, in another case (r), in which the plaintiff occupied a dwelling-house abutting on a public high road, and a railway company, in the execution of the works of their railway, *raised* the public high road to the height of ten feet opposite to the plaintiff's house, whereby the access to the plaintiff's house was impeded and the house rendered damp and unwholesome by rain and mud, which penetrated into it from an adjoining bridge, and the plaintiff in consequence lost his health; it was held, that, the defendants' acts being lawful and the injury to the plaintiff's house of a permanent nature, and the loss of his health consequent thereupon, the plaintiff's remedy was by seeking compensation pursuant to 14 & 15 Vict. c. 70, and not by an action.

Again, in the following case (s), the plaintiff was held entitled to compensation under the Lands Clauses Act.

Glover v. North Staffordshire R. Co.
 Crossing private roads.

At the trial, the jury found a special verdict, which stated the following facts:—The plaintiff, during the time of the construction of the works of the company, was and is the owner and occupier of the premises mentioned in the declaration, which are two miles from the town of Longton, in which latter place the plaintiff carried on the business of a brewer; that the property consists of a house and sixty acres of land, comprising pleasure grounds, &c.; that the plaintiff became the purchaser of this property twelve years ago, and shortly after began to improve it by laying out gardens; that in 1847 the plaintiff commenced building the present house upon the property, which was finished and fit for occupation in 1849, when the plaintiff went to reside therein; that the whole sums expended on the improvements and house amounted to 4,000*l.*, of which 2,000*l.* were expended before the Act of Parliament was applied for; that the house and lands are approached by two roads, the one leading from Longton, and the other from the town of Fenton; that the roads are private roads only, passing over the property of third parties, but that the plaintiff and the occupiers of the said farm had a right of way over the same as appurtenant to the farm for passing on foot and with carriages; that the said roads form the only access to the premises of the plaintiff; that the owner and occupier of a cottage

(r) *Tuohey v. Great Southern and Western R. Co.*, 10 Ir. C. L. Rep. 98 (1859).

(s) *Glover v. North Staffordshire R. Co.*, 16 Q. B. 912; 20 L. J. (Q. B.) 376; 15 Jur.

673. See also *Watkins v. Great Northern R. Co.*, 16 Q. B. 961; 20 L. J. (Q. B.) 391.

And see *Gattke's case*, post, 222.

has also a right of way over the Longton Road; and two other persons, owners and occupiers of other adjoining premises, have a right of way over the Fenton Road; that the property of the plaintiff is situate on the west side of the Trent and Mersey Canal; that the towns of Longton and Fenton are situate on the east side of the canal, and the two roads converge as they approach the canal, and unite and are continued as one road over a bridge erected over the canal, and thence to the premises of the plaintiff; that the defendants are a company incorporated, and in 1847 proceeded to construct the railway, and in so doing carried the same across the said two above-mentioned roads on the level, and at a point to the east of the place where the two roads unite, and which is distant 115 yards from the nearest point of the land of the plaintiff, and 350 yards from his house; that the railway so made across the roads consists of four lines of iron rails, in an oblique direction, and form a double line of railway; that the railway crosses the said roads in a direction nearly north and south, and in such a direction that a person standing on the roads where they are intersected by the railway could not see a train approaching, until within a few seconds of its arrival at these points; that there are no signals or other means of indicating when trains are approaching; that there is a gate on each side of the said railway upon and across each of the roads; such gates are kept locked under the provisions of the act, and that a key of them is kept by a servant of the company, who lives about 130 yards from the gate; that the plaintiff has a key which will open the gates, as also the said other persons having a right of way; that by reason and in consequence of the facts hereinbefore stated, and of the said execution of the works by the company, the property of the plaintiff was before and at the time of the giving to the said company of the said notice in writing, and still is, depreciated in value. Lord Campbell, C. J., said:—

Compensation.
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roads.

"It is clear that the plaintiff is entitled to judgment. The property is depreciated in value by the company doing that which would be actionable, unless they were protected by the powers of their act. I agree that this affords a very fair criterion of the right to receive compensation. No doubt there may be a loss arising from the making of a railway, which would not support a claim of compensation, because the act might be one which would be legal without the powers conferred by the act. But this is not such a case. This interference would have given a cause of action against a private person, and it has depreciated the plaintiff's property, which is therefore injuriously affected by it. The erection of the gates and the passage of the trains are both acts done to the prejudice of the plaintiff, and to the diminution of his right."

And in another case of a similar nature, Lord Cranworth, V. C., dissolved an injunction which had been granted in equity to restrain

South Stafford-
shire R. Co. v.
Hall.

Compensation.

South Staffordshire R. Co. v. Hall.

Injunction to stay proceedings for compensation refused.

the party injured from proceeding to recover compensation (t), and said:—

“Here the alleged grievance is personal to the complaining party only, and not extending generally to all her Majesty’s subjects, as in *Smith’s case* (u). It was argued for the company in that case, that the 68th section applied, not to damage occasioned by the works having been made, but only to such damage as was produced by the work while in the progress of execution; and here, it was said, the claim was wholly for the damage occasioned by the existence of the railway as a completed work, whereas in *Gattke’s case* (x), some part of the compensation claimed was for the annoyance produced by the works while in progress. To this argument there appear to be two answers: first, there is nothing on the face of the notice served on the plaintiffs in this case, which would exclude the defendant from giving evidence of, and obtaining compensation for, damage to him during the progress of the works, as well as since the completion of the railway; and secondly (and on this I mainly rely), that the question, whether, under the 68th section, the defendant is entitled to compensation for damage resulting from the existence of the railway as a completed work, is a purely legal question, to be settled in the ordinary course of legal proceedings, without the intervention of this Court. I may add further, that, if there were any validity in this distinction, the Lord Chancellor, in *Gattke’s case*, would not have altogether dissolved the injunction, but would have only so modified it as to make it applicable to so much of the defendant’s claim as related to the injury arising from the railway having been made, for there, as in this case, a part at least of the damage for which *Gattke* sought relief had been occasioned, not by the works while in progress, but by the railway having been completed; and, not being able to discover any distinction in principle between this case and *Gattke’s*, I shall certainly act on that decision, and dissolve the injunction which I granted before that case had been decided.”

Little v. Dublin and Drogheda R. Co.

Cutting off stream.

Where the plaintiff was in possession of a farm and in the enjoyment of a stream of water flowing through his land which he used for irrigation and other purposes, and the defendants in the construction of their railway cut off the stream, as they had power to do under their special act; it was held, that this was a case for compensation in the manner pointed out by the statute, and not by action (y).

Gattke’s case.

Draper’s goods damaged by dirt and dust, &c.

Similar principles were acted on in the following case (z). The defendant was a draper and furrier, and the question in the suit arose out of his claim for compensation, as being injuriously affected by the execution of the works of the railway company. The damage alleged to have been sustained by the defendant was in consequence of the dust and dirt occasioned by the company having damaged his goods, and by reason of his customers having been compelled by the obstruction occasioned by the plaintiff’s works to quit the side of the road upon which the defendant’s shop was situated, before they

(t) *South Staffordshire R. Co. v. Hall*, 20 L. J. (Ch.) 397; 1 Sim. (N. S.) 388.

(u) Post, 224, note (b).

(x) *Infra*.

(y) *Little v. Dublin and Drogheda R. Co.*,

7 Ir. C. L. Rep. 82; and see *Mortimer v. South Wales R. Co.*, 29 L. J. (Q. B.) 129; 1 E. & E. 375.

(z) *East and West India Docks R. Co. v. Gattke*, 3 Macn. & Gord. 155.

arrived at his shop, and to cross to the opposite side of the road in order to pass along; by reason whereof, during several weeks, he had sustained a great loss in his trade. The defendant also alleged that he had been injuriously affected and injured by the company having stopped up a passage, along which he was entitled to a right of way to the entrance at the back of his premises. No part of the defendant's premises were inserted in the schedule to the company's special act, and no part of them had been taken, used, or at all interfered with, by the works of the company, except as aforesaid.

Compensation.
Gattke's case.

The defendant had commenced an action against the company to recover 400*l.*, under sect. 68 of the Lands Clauses Act; and the company had obtained an injunction to restrain this proceeding, which the defendant now sought to set aside. Lord Truro, C., said:—

“The first and most important point is, whether, upon the correct construction of the Lands Clauses Consolidation Act, the defendant is within the class of persons entitled to compensation, that is to say, is he the occupier of lands that have been injuriously affected by the works of the company.”

“The only sections of the act of Parliament, that appear to have any particular relation to this question, are 22nd and 68th, which are to the following effect.”

His lordship read these sections.

“I am not aware that these two sections have ever received a judicial construction; but it appears to me that sections and expressions contained in other acts of Parliament, of the same import as those on which the questions in this case depend, have come in judgment. The rules of construction which have been applied to railway acts and other acts of the same nature are, that they are to be liberally expounded in favour of the public, and strictly as against the company. The authorities for these rules are so numerous and well known as to render a particular mention of them unnecessary.”

After commenting upon *R. v. Eastern Counties R. Co. (a)*, his lordship said:—

“The material words of the 9th section in that case are, ‘the said company are to make full satisfaction to all persons interested in any lands which shall be taken, used or injured, for all damages sustained by reason of the execution of the powers granted by the act.’ Upon comparing these words with the words of the 68th section of the 8 Vict. c. 18, I think they cannot be distinguished, and that the same construction must apply to both. The question which arises upon the sections which I have compared is the same; and that question is, whether compensation is limited to damage sustained by persons whose lands, or a part of whose lands, are to be taken, used, or directly interfered with; or does the right to compensation extend to consequential damage. The judgment of the Court of Queen's Bench was deliberate and considered, and the Court acted upon it by directing a peremptory mandamus to the company to issue a precept. The 68th section of the act now in question expresses the same meaning, and ought therefore to receive the same construction, especially when it is remembered that the judicial construction of the words I have referred to was pronounced in Michaelmas Term, 1841, and the Lands

(a) 2 Q. B. 347, ante, 218.

Compensation.
Gattke's case.

Clauses Consolidation Act was passed in 1845, so that it cannot be reasonably supposed that the framers of that act were not aware of that judicial construction, and still less that the framers of the act under which the company was incorporated were ignorant of it, and who, if the compensation to be given were intended to be more restricted than the decision of the Queen's Bench comprised, would doubtless have procured some legislative enactment more distinct and expressive of the intended limitation.

"The only ground of equity raised by the bill is founded upon the question, whether the 22nd and 68th sections entitle any other persons to compensation than those whose lands are taken, used, or directly interfered with, to the exclusion of the right to compensation of all persons whose lands are not so affected; but, as I before stated, I think the judgment of the Court of Queen's Bench a satisfactory answer to that question, and that the only ground of equity fails, and that the injunction ought therefore to be dissolved.

"It was strongly argued that *L. and N. W. R. Co. v. Smith* (b) governed the present case, and that this injunction cannot be dissolved without overruling that decision. If the question in this case was the same as that determined in the case referred to, I should yield to its authority, because I do not think it would be proper for me to overrule a former recent judgment of this Court, as such a course of proceeding would introduce great uncertainty in the law of the Court. I may, however, state that I should not deem it right to extend the application of the principle of that decision. I therefore disclaim the intention to overrule that decision.

"I however think this case distinguishable, because in that case compensation was claimed solely upon the ground of the injurious effect resulting from the permanent stoppage of what at the time of the company's acts complained of was a public highway, no damage or injury being sustained by the claimant but what in a greater or less degree applied to all the Queen's subjects. The only question, therefore, was a question of law, and which seems to approximate very nearly to the question decided in *R. v. Bristol Dock Co.* (c).

"It has also been assumed, in the argument, that the compensation jury have no

(b) 1 Macn. & Gord. 216; 5 Railw. C. 716. There the complaint of the defendant was, that the company had carried their railway across a public street, which by their act they had authority to do, but by so doing they had greatly incommoded the inhabitants of one end of the intersected street, making access to their houses much less convenient than it had theretofore been. Smith, as one of the inhabitants, made a claim for compensation, and gave the notice for summoning a jury; and the company filed their bill to restrain Smith from proceeding on his notice, on the ground, that the act complained of was not one in respect of which they were liable to make compensation at all. The Vice-Chancellor of England refused an injunction; but Lord Cottenham, C., on appeal, granted it; and the ground of his decision appears to have been, that the Court would not permit a party to put in force the power given him by the act for assessing the amount of his damage, until he had first established his legal right to receive some compensation, that is to say, until he had shown that the damage complained of was damage in respect of which

sect. 68 of the Lands Clauses Consolidation Act entitled the party to redress. Lord Cottenham does not appear to have decided whether the case was one which entitled the defendant to compensation or not. His Lordship said—"Here is a party whose house and premises are likely to be, more or less, affected by the works of the company. Those works are directly authorized by the Act of Parliament, and they may or may not injuriously affect the owner of those houses. If the company are liable to him, it is obvious that they may be also liable to his neighbours, and the proportionate injury to the several houses in the same street must be difficult to ascertain. It is important, however, to decide the general question, which, being one of law, ought not to be determined in this Court."—An injunction was accordingly granted, with liberty to the defendant to bring an action to establish his right to recover damages. See remarks on this case, ante, 222; and see *Duke of Norfolk v. Tennant*, 16 Jur. 308, post, 243.

(c) 12 East, 429, post, 235.

jurisdiction to decide upon the question of right; but during the many years that compensations have been assessed (that is, ever since the passing of the London and West India Docks Acts, fifty years ago), questions upon the construction of the compensation clauses have constantly arisen before the Recorder of London and other presiding officers, and of necessity they have been decided by him and the jury. Such questions of construction have incidentally and directly arisen and been decided; and of necessity, for they cannot be anticipated. The jurisdiction of the jury has been frequently recognized. In *R. v. Lancaster and Preston Junction R. Co.* (d), the jury found that the claimant had sustained 'no damage,' and upon application for a mandamus to compel the company to issue a new precept, the Court refused so to do, and thereby upheld the inquisition.

Compensation.
Gatlke's case.

"In this case, as I see no reasonable doubt that if the defendant has in fact sustained damage from the causes alleged, he is a person entitled to claim compensation, and that he is entitled to have the question submitted to a jury, the injunction must be dissolved with costs."

And where a tunnel was made so near a public-house that the beer in the cellars was made unfit for consumption by reason of the vibration caused by trains passing, the owner was held entitled to compensation (e). The facts were these. The defendant was possessed of a public-house, called the Crown Tavern, and several shops, dwelling-houses, and other buildings, in Huddersfield. The plaintiffs, in exercise of their powers, constructed a tunnel, which formed part of the line of railway, and immediately adjoined the north-western extremity of the defendant's premises. The defendant alleged that his hereditaments and his interest therein were damaged and injuriously affected by the construction of the tunnel, and the execution of the works, for that the passing of the engines and carriages through the tunnel caused considerable tremor and vibration through the whole of the buildings belonging to him, especially in the public-house, and that, in consequence thereof, beer placed in the cellars became thick and unfit for consumption; that the tremor and vibration caused could be sensibly felt in every part of the inn, and caused glasses to jingle on the shelves; that previously to the construction of the tunnel the inn was well accustomed, and the tenant thereof, who was the defendant's brother, was doing a considerable business thereat, but since such use of the tunnel the business had declined. Under these circumstances, the defendant proceeded to recover compensation from the company, under the 68th section of the Lands Clauses Act. The company thereupon applied for an injunction to restrain the proceedings, which was granted by Lord Cranworth, V. C., upon the authority of *L. and N. W. R. Co. v.*

London and North-Western R. Co. v. Bradley.
Tunnel made so near public-house that the beer in the cellars was made unfit for consumption, by the vibration caused by trains passing.

(d) 6 Q. B. 759. See also *Bradby v. Southampton Local Board of Health*, 4 E. & B. 1014. The jury cannot entertain questions of right, post, Ch. VI., Sect. 4.

(e) *L. and N. W. R. Co. v. Bradley*, 6 Railw. C. 551. See *Croft v. L. and N. W.*

R. Co., 32 L. J. (Q. B.) 113, where the plaintiff having sold to the company a site for a tunnel, was held not afterwards entitled to compensation for damages caused by vibration in passage of trains. And see ante, 174, note (x).

Compensation.
London and
North-Western
R. Co. v. Bradley.

Smith (f). Lord Truro, C., however, dissolved the injunction, saying:—

“I have a very strong opinion upon this case. I took much care and pains in forming my opinion before I delivered my judgment in *Gatthe's case (g)*, and I think that the principles of that case are applicable to this. It appears to me that the interference of this Court would, in the present case, be in the highest degree mischievous, for it would amount, not only to a denial of justice, but to the infliction of positive injustice. This is a question of pure legal right; the defendant insists that, under the construction of certain acts of Parliament, he has sustained an injury, for which they give him compensation. It is the object of these acts to give compensation in certain cases for certain injuries, and they prescribe the mode in which compensation shall be recovered for these injuries; and while the statutes give a form in which compensation is to be sought, they also in effect deprive the party of all other legal remedy; for I think I may venture to assert, that in no case in which a man would be entitled to work out his compensation under an act can he maintain an action. The very circumstance of the act prescribing a mode of recovering compensation, pre-supposes that the thing in respect of which compensation is given, is authorized to be done under the act, leaving the parties with all their legal remedies unaffected in respect of any proceedings not authorized by the act of Parliament. This is, therefore, purely a question of the legal construction of these acts of Parliament. The legislature having prescribed a certain form of proceeding only, I must suppose, independently of decision, that it conceived, when it created that particular tribunal, that that tribunal was vested with the power of determining whether there was to be compensation or not.”

After discussing the various sections in the act, his lordship proceeded:—

“Whether an action will lie on behalf of a man who sustains a private injury by the execution of parliamentary powers, exercised judiciously and cautiously, is not an easy question, or rather, it is not easy to come to a conclusion that an action will lie. I entertain a decided opinion (probably, however, erroneous) that no such action will lie. I do not entertain anything like so decided an opinion that a claimant may not work out his claim in the way in which he proposes to do; he may or may not. It is well worthy of his consideration, looking at the very imperfect manner in which these acts are prepared—taking the two acts together—taking the 6th section of the 8 Vict. c. 20, which refers to obtaining compensation for certain matters, and speaks of compensation by reason of the exercise of certain powers given by the special act, whether, when you come to compare the compensation which the parties under the 6th section are entitled to with the particular words which are used in the earlier part of the 68th section, the words do so correspond as to make the course by arbitration as safe as the course by jury. That is for them to consider. It may or may not be so; but, at all events, I dare say they are well advised in the course which they have taken.

“The main question is, whether this Court can, as I said before, interfere to prevent a claimant from pursuing a legal right by a legal course, it not being imputed to him that there is anything vexatious in it, or that he is making anything more than a fair attempt to obtain the decision of a court of law upon the claim he sets up. It is clear that the defendant in the present case has sustained an injury, and that too by the operation of an act of Parliament. He is the owner of a public-house, which is well known generally to be of more value than a house of the same

(f) Ante, 224, note (b).

(g) Ante, 222.

size, not used as a public-house. When the landlord comes to sell his interest in this house, it will sell for so much the less if people cannot use it as a public-house. Therefore his interest is materially affected by the value of his property being actually reduced. He cannot sell his house in future for a public-house if the vibration is such that the publican cannot keep his beer in a fit state for his customers. That the man, therefore, has sustained an injury is clear; but whether it is of such a nature as to entitle him to compensation, or whether it must be borne, with the view of obtaining the larger benefit to the public, is another circumstance. It may or may not be so; but, at all events, a man has a right to take the opinion of a court of law (his injury having been caused by that which could not have been done safely without the powers of an act of Parliament), whether Parliament has or has not given him compensation."

Compensation.
London and
North-Western
R. Co. v. Bradley.

And, upon similar principles where a canal company were empowered by act of Parliament to construct a reservoir, raising the water to a certain height, it was said by the Lord Chancellor, upon an application for an injunction by a person whose lands were injured by the water overflowing, that if the damage to the plaintiff's lands was the inevitable result of the proper execution of the works, causing an occasional flooding in contradistinction to a permanent submerging, he must be left to his remedies under the 68th section of the Lands Clauses Act, which was incorporated in the special act (*h*).

Ware v. Regent's
Canal Co.
Lands occasion-
ally flooded.

So where the access to an ancient ferry was obstructed by a railway company, the owner was held entitled to compensation (*i*). The facts were, that the Great Northern Railway Company, in 1848, made and constructed a portion of their line of railway along the west bank of a cut or river called the Fossdyke, in Lincolnshire. The owner of certain lands gave the company notice that he required compensation in respect of his interest in the lands, as owner in fee-simple, and that the manner in which such lands had been injuriously affected was by the disturbance of and cutting off the communication with the ancient ferry attached and belonging and held with the lands in question, and by erecting another ferry near to such ancient ferry belonging to him; by all which said acts they had considerably reduced the profits of his said ancient ferry. The company having issued their warrant, the claimant contended before the jury that he was entitled to compensation in respect of the obstruction of the ferry; and he proved that he had sustained damage in respect of the same; and the jury awarded 380*l.* as compensation.

Re Cooling.
Access to ferry
impeded.

(*h*) *Ware v. Regent's Canal Co.*, 28 L. J. (Ch.) 156; 3 De G. & Jo. 212; 23 Beav. 575.

(*i*) *Re Cooling*, 19 L. J. (Q. B.) 25; *S. C.*, nom. *R. v. Great Northern R. Co.*, 14 Q. B. 25; and see *Sutton Harbour Commissioners v. Hitchins*, 21 L. J. (Ch.) 73. See also

Macey v. Metropolitan Board of Works, 33 L. J. (Ch.) 377, where the plaintiff's right of access to the River Thames, and of loading, &c. barges, was blocked up, and Wood, V. C., said it was a case for compensation, not purchase, under the Lands Clauses Act.

Compensation.
Re Cooling.

In discharging a rule for a certiorari to remove the inquisition, Patteson, J., said:—

“Cooling claims compensation from the Great Northern Company in respect of an injury to land held by him in fee, in the city of Lincoln. The injury, if any, is occasioned by the works of the company, in the county of Lincoln, on the other side of the Fossdyke, by cutting off the communication on the Lincolnshire side with a ferry, said to belong or be appurtenant to the land of Cooling. Objection is made that this case is within the principle of *R. v. London Dock Co.* (*k*), where it was held that the destruction of houses and public roads in the neighbourhood of a public house, by which the custom of the house was diminished, was not the subject of compensation. But the present case is quite distinguishable. Here the ferry is a private right, and if it be attached to the land of Cooling, the value of that land is seriously affected. The question is whether it be so attached. Cooling is not the owner of the water nor of the landing-places, as it should seem, on either side, certainly not on the Lincolnshire side. But it is not essential to a ferry, that the owner of it should have the land on either side, if he has the right of using that land for the purpose of the ferry (*l*). And the evidence of user here for many years is abundant to show such right. Under all the circumstances we think the jury were justified in coming to the verdict that it did.”

R. v. Thames and Isis Navigation Commissioners.

Towing-path impeded.
Loss of tolls.

A navigation company was empowered by their special act to make new cuts and otherwise improve a navigable river: and the act gave compensation to persons aggrieved, damaged or injured “by any work made by the commissioners, or by the operation or effect of any such work.” On a bend in the river there was an ancient towing-path, belonging to the owner of the adjoining land. The commissioners made a short cut from one extremity of the bend to the other, so that the ancient towing-path was no longer frequented, whereby the owner was deprived of his tolls, and the navigation of that part of the river was impeded: It was held, that the owner of the towing-path was entitled to receive compensation (*m*).

Lord Denman, C. J., in awarding a peremptory writ of mandamus to the commissioners, to pay money awarded for compensation, said:—

“The cause shown by the commissioners in their return is, that the damage described is not, within the statute, a grievance. Their argument was, that a mere diversion of custom from the owner of a towing-path, who lets out his horses to be used there, can be no more considered as an injury than could the loss of guests brought upon the owner of an ancient public house, by making a new road, cutting off a bend by which the house stood. We were referred to authorities where a claim somewhat similar was held inadmissible (*n*). The answer is to be found in the very peculiar language of this statute, which differs altogether from the

(*k*) 5 A. & E. 163; post, 235, n. (*b*).

(*l*) *Peter v. Kendall*, 6 B. & C. 703.

(*m*) *R. v. Commissioners of Thames and Isis Navigation*, 5 A. & E. 804. It was also held, that a refusal by commissioners to entertain a complaint amounted to “an order, determination and judgment,” from

which an appeal lays, *ibid*.

(*n*) On this point the following authorities were cited:—*R. v. Commissioners of New Outfall*, 9 B. & C. 875; ante, 215; *R. v. London Dock Co.*, 5 Ad. & E. 163; post, 235, note (*b*); *R. v. Bristol Dock Co.*, 12 East, 429; post, 235.

numerous acts of the same nature which were sent to us after the argument (o). We might have found little difficulty in deciding that such damage could not give the sufferer the denomination of a party aggrieved. And though the remedy is provided for the party who *thinks* himself aggrieved, and that question is sent to the Quarter Sessions, yet those words would probably have not been held extensive enough to prevent our judgment, that such damage was no grievance. But the clause empowers every one who may think himself *aggrieved, damaged or injured by any work made by the commissioners, or by the operation or effect of any such work*, to apply for compensation to the commissioners, who are to make such order, determination and judgment thereon as to them shall seem just, and give such satisfaction to the party complaining as to them shall seem reasonable. Lord Boston asks for compensation and is refused. On his appeal to the sessions, that Court is invested with cognizance of the cause, and enjoined to make such order thereon as seems just; a much wider power than merely to assess damages for some recognized injury. Can we say that they have done wrong in deciding that the damage has accrued by the operation and effect of works done by the commissioners? On the contrary, to assert that it has not, would have been a direct untruth, in the ordinary sense of the words; and no other sense is attached to them by any clear legal authority. Another objection of a technical kind was relied on—that the jurisdiction of the sessions did not attach, because the commissioners had come to no order, determination or judgment, from which an appeal would lie. On the facts, we have not the least hesitation in saying, that the refusal to accede to Lord Boston's application, or to hear any evidence in support of it, was a plain determination that he was not entitled to what he claimed, and consequently a proper subject of appeal. This is one of a class of cases which has become exceedingly numerous, in which the Court has found itself constrained to give the words of a private act an effect probably never contemplated, and very probably not intended by the legislature which enacted it. But our duty is to look to the language employed, and construe it in its natural and obvious sense. The liabilities thus imposed on themselves by bodies of men are the conditions upon which the public empower them to perform works expected to be beneficial to both contracting parties. We are not at liberty to inquire whether the bargain is reasonable, but are bound to see it executed."

Compensation.

R. v. Thames and Isis Navigation Commissioners.

It has also been held, by the Court of Queen's Bench (p), that a brewer, the owner in fee of a public house let on lease with the usual restrictive covenant to take beer, &c., from the landlord, was entitled to compensation from a railway company who took and pulled down the house under their act of parliament, for the additional value of the premises by reason of such restrictive covenant.

Bourne v. Mayor, &c. of Liverpool.

Owner of public house let with restrictive covenant as to beer, &c., entitled to compensation therefore.

Several cases have also been decided upon the rights of owners of mines and minerals and their lessees to receive compensation for loss of profit, &c., caused by the construction of railways and canals (q).

Mines.

Thus, where the lessee of coal mines received a notice from a canal company not to work the colliery within eight yards of the canal,

Barnsley Canal Co. v. Twibell.

(o) Copies of several local acts were sent to the learned judges. On this point the General Turnpike Act, 3 Geo. 4, c. 126, ss. 85, 145; and 4 Geo. 4, c. 95, s. 87, were also referred to.

(p) *Bourne v. Mayor, &c. of Liverpool*, 33 L. J. (Q. B.) 15; 8 L. T. (N. S.) 573.

(q) Where the right exists it must of

course be enforced in the manner provided by the statute. An action cannot be maintained where the statute directs a feigned issue. *Fenton v. Trent and Mersey Navigation Co.*, 9 M. & W. 203; 2 Railw. C. 837; and see *Lister v. Lobley*, 7 A. & E. 124; *R. v. North Midland R. Co.*, 2 Railw. C. 1.

Compensation.
Barnsley Canal
Co. v. Twibell.

which notice they were empowered to give under the Canal Act, and the company had purchased of the lessor all his interest in the coals so reserved: It was held, that the lessee was nevertheless entitled to receive compensation for the loss of the profit which he would have made on the coal, if he had not been thus restrained from working the colliery (*r*), and the Master of the Rolls said:—

“I am of opinion, that the defendant, under his lease, had an interest in the coal under the eight yards on each side of the canal; he had a right to get the coal and sell it, upon paying the sums which became due to Mr. Beaumont. Upon this dealing, there might have been profit, which he is prevented from making. The value of the coal in the bed, or the price paid to the coal-owner, can be no compensation to the coal-worker for the loss of the interest which he had acquired. The ground on which it is argued that he should have no compensation is, that when he took his lease he had notice, or was informed by the act of Parliament, that he was not to work the coal so as to injure the canal. But, at the time when he took his lease, he had no notice that the plaintiffs would require eight yards of breadth of coal to be left on each side of the canal. The coal under the canal was not comprised in his lease, and he had no interest in it; but he did not know that the plaintiffs would require more or less than the eight yards, or, indeed, any breadth of coal, on each side of the canal. He knew that he was not, by working his coal, to injure the canal; he also knew that the plaintiffs were entitled to inspect his workings, and, if he worked contrary to the directions of the act, were entitled, at his expense, to make the repairs rendered necessary by his improper working; but as the plaintiffs did not think fit, for so many years, to give any notice as to the quantity of coal, if any, which they required to be left, it does not appear why the defendant might not enter into an agreement for working and getting all the coal comprised in his lease. I think it very probable that the powers given by the act might have been so exercised as to enable the plaintiffs to buy the coal under the canal, and a reasonable distance on each side of them, at the value of the coal in the bed; but, for reasons of their own, they probably desired to delay the notices as long as they could; they left it quite uncertain whether they would or would not require any coal to be left for the safety of the canal, and I think that they cannot justly complain of any rights which the coal-owners may have conferred on the coal-workers during the time that their notices were delayed for their own convenience. And, under the circumstances, I am of opinion, that the defendant lawfully acquired an interest in the coal which the plaintiffs desire to be left for the safety of the canal.”

Cromford Canal
Co. v. Cutts.
Mines.

Again, in a case (*s*) in which a notice had been given by a canal company to a mine-owner not to take coal near the canal, and the Lands Clauses Consolidation Act was subsequently incorporated with the Canal Act, Lord Cottenham, C., refused to continue an injunction to restrain the coal-owner from proceeding to have the damages assessed by arbitration, saying:—

“If the coal-owner sustains injury, by getting less coal, or by working in a less beneficial manner, for the sake of not injuring the canal, he will, in the same manner as if he be under notice to leave a third of the coal, or a pillar, have a right

(*r*) *Barnsley Canal Co. v. Twibell*, 13 L. J. (Ch.) 434.

(*s*) *Cromford Canal Co. v. Cutts*, 5 Railw. C. 442.

to compensation. The question is, whether the defendants are to be restrained from taking any proceeding to have the amount of compensation for coal claimed, in consequence of the notice given to the company, settled by arbitration, and from in any other manner enforcing, or taking any proceeding to enforce, the payment of the compensation for coals claimed by the defendants.

Compensation.
Cromford Canal
Co. v. Cutts.

“Now to decide that question, it is not necessary to come to any conclusion as to the rights of the parties in regard to the matters in difference between them. But, to resist this motion, the plaintiff must show such an equity as entitles him to an injunction. The conclusion to which the Vice-Chancellor came was, that there was an equity, because, under the act, the coal passed to the company, and that the defendants had no right to compensation for any coal under the canal, and that the owner must have received compensation at the time the canal was made; but the facts of the case do not support any such equity, and I cannot come to that conclusion, which is inconsistent with the terms of the act. The 34th clause provides, ‘that nothing herein contained shall affect the right of the owners of land through which the canal shall be made to the mines and minerals lying within or under the lands to be made use of for the canal,’ &c.; but all such mines and minerals were thereby reserved to such owners of land, and it should be lawful for such owners of land (subject to the conditions and restrictions therein contained) to work, get, &c. such mines and minerals, ‘not thereby injuring, prejudicing, or obstructing the canal.’ Now, that clause, read by itself, is free from any ambiguity. The owner of land may work and carry away the coal, provided he does no harm to the canal in getting it. That is a restriction on his right; whether the company purchase the coal or not, he is restricted from getting it, if he thereby injure the canal. It is necessary, in any event, that he should provide, at his own risk, against any mischief to the canal. Then the 35th section provides, that if the owner or worker of any coal or mine should in pursuing such mine work near or under the canal, so as in the opinion of the company to endanger or damage the same, or in the opinion of the owner or worker of the mine to endanger or damage the further working thereof, then it should be lawful for the company to treat and agree with the owner or worker of all such mines or minerals as might be near or under the canal, and should be thought proper to be left for the security or preservation of the canal or mine as aforesaid, and in case of disagreement, certain commissioners were appointed to assess the amount of compensation. The plaintiff says he has an equity to restrain the defendants, because they are using the machinery for ascertaining compensation under the modern acts, for a purpose not contemplated by the Canal Act. The owner is entitled to take his coal, but not so as to injure or destroy the canal. The 34th section expressly says he may take so much as he can, consistently with the rights of the canal company. It may be proper, for the safety and preservation of the canal, to take some part, and leave other parts of the coal. The damage may be partial only, or he may be obliged to work in a less beneficial manner; and then the 35th section applies, and the machinery of the act is put in operation, to ascertain how much the coal owner is prejudiced. There might be a case where no damage to the owner would accrue. If the coal-owner’s power and control over his mine be not interfered with by the rights vested in the company, then it will not be necessary to put in operation the machinery of the act, if the damages be merely imaginary; but I have it in evidence that the agents of the company at one time thought there would be injury to the canal by the defendants working their coal. The claim made by him may exceed the amount of compensation to which he is entitled, or it may not. I do not know how much may be recovered by the owner; but, when the machinery provided by recent acts was not in operation, the defendants were unable to assess the amount of their claim. They are now entitled

Compensation.
Cromford Canal
Co. v. Cutts.

to proceed, not for the purpose of seeing whether the company like to purchase the coal or not, but to ascertain whether there be or not any injury either to the owner of the coal, or the canal company.

"The amount of damage is a matter of evidence, but the ground on which the plaintiff comes for an injunction is, that there is no injury. If I had been satisfied that no injury would arise, and that there was no damage to the defendants, I might have interfered. But it is clear that it was at one time thought, by both parties, that injury would arise; and I cannot say the defendants are wrong in submitting this case to the proper tribunal, to ascertain how much compensation they are entitled to, that tribunal being expressly provided to decide matters of right between owners of the mines and the company. I do not see that the Vice-Chancellor gave an opinion on this part of the case, as he decided that the owner must be presumed to have received compensation. The injunction granted by him must therefore be dissolved."

Fletcher v. Great
Western R. Co.
Mines.

And it has been held (*t*) that a railway company having purchased land for the purposes of their railway, under the Lands Clauses Act and the Railways Clauses Act, by a conveyance in the usual statutable form, in such cases is not entitled to exclude the owners of the mines from working them without paying compensation, and such compensation having been assessed regularly under the acts, the owners may recover the amount in an action. And Pollock, C. B., said:—

"The construction of the clauses in the act is clear, that unless the mines and minerals are expressly purchased they shall be deemed to be excepted out of the conveyance. They were *not* so purchased: the conveyance is in the form given by the act, consequently the company have taken the land as if the mines and minerals were excepted. They belong, therefore, not to the company, the owners of the surface, but to the owners of the *land*. The 78th section enacts, that the mines near the railway shall not be worked if the company are willing to purchase them. In that respect it puts all the world on the same footing, whether they are grantors or strangers. But if the company are unwilling to purchase them, then the owners may work them, which means, that if the company desire to exclude the owners from working the mines they can, by taking the proper course, do so. If they do not, then they may go on working the mines without doing unnecessary damage."

R. v. Leeds and
Selby R. Co.
Future damage to
mines.

Where a company purchased land to form a railway, all minerals being reserved to the vendor, and no claim was then made by him for compensation in respect of future damage which might result, it was held, that when the works of an adjoining colliery belonging to the vendor approached the land on which the railway was made, the lessee of the colliery could not claim compensation; as the extent of the colliery was capable of being known at the time of the purchase of the land, and the claim ought then to have been brought forward (*u*).

(*t*) *Fletcher v. Great Western R. Co.*, 28 L. J. (Exch.) 147; 29 L. J. (Exch.) 253.

(*u*) *R. v. Leeds and Selby R. Co.*, 3 A. & E. 683; *R. v. Aire and Calder Navigation*, 30 L. J. (Q. B.) 337. See also *Stourbridge*

Canal Co. v. Dudley, 30 L. J. (Q. B.) 108, upholding *Dudley Canal Co. v. Grazebrook*, 1 B. & Ad. 59, from which it seems that where there is a clause in an act of Parliament directly pointed to the getting of coal

And in a case (*x*) in which a colliery was inundated with water in consequence of a railway company having diverted the course of a brook, it was held that the owners of the colliery were entitled to compensation; and that the damage having been partly done under the powers of an act of Parliament, and partly not, the proper remedy was by mandamus to compel the company to assess compensation. The facts were these. The complainants, Messrs. Gratton, were the owners of certain collieries, and in 1830 had made an adit, from a stream called Smith's Brook, for the purpose of watering and laying dry the coal, and the water pumped up from the mine had been accustomed to run off along the adit into Smith's Brook; the complainants had worked the colliery from 1830 to October, 1838, when they were prevented from getting any more coals, in consequence of the coal-works being filled with water; the defendants, in proceeding to carry the powers of their act (6 & 7 Will. IV. c. cvii) into execution, had altered and diverted the course of Smith's Brook into a new course, upon much higher ground, and had thereby caused the water to flow up the said adit, and also to flow into the outcrop of the coal, and from thence into the coal-works, in such large quantities as to render it impossible to work the same. Messrs. Gratton accordingly demanded compensation, which was refused. The affidavits in answer stated that the colliery had for several years been liable to occasional stoppages from water flowing into the works; that when the new course of the brook was first set out, upon the suggestion of Gratton, instructions were given to make the bottom of the new course of the same depth as the adit of the colliery, so as to permit the same to drain freely into the brook; and that after the new course was completed, the water from the colliery had been constantly seen draining into it through the adit; and that afterwards there was a heavy flood, which washed a quantity of earth down the new course, and partially obstructed the mouth of the adit; and that such soil still remained, it not being considered necessary to clear the same away, as the colliery had ceased to be worked for a period of three months before that time. It was denied that the company had caused the water to flow from such stream into the adit in larger quantities than it had always done. Sect. 12 empowered the company to alter the course of any rivers, &c., as might be necessary for constructing tunnels, &c., and to divert or alter the course of any rivers or streams,

Compensation.

R. v. North Midland R. Co.

Colliery inundated by diversion of brook.

within twelve yards of a canal, and pointing out how the company are to acquire the coal, if they think fit, and giving them in that case power to forbid the working, that if the company do not choose to do so they cannot maintain an action against the mine

owner for an injury arising to the canal from his working the mines below in the usual way.

(*x*) *R. v. North Midland R. Co.*, 2 Railw. C. 1. See also *Lister v. Lobleigh*, 7 A. & E. 124.

Compensation.
R. v. North Mid-
land R. Co.

or to raise or sink any rivers or streams, and to make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway, the said company doing as little damage as might be, and making full satisfaction to all persons interested in any lands taken or injured, for all damages to be by them sustained. Lord Denman, C. J., said:—

“We do not adjudge that there is damage done; that is a question for the jury: it is enough to induce us to issue a mandamus, that the claimants say, by the raising of the level of the brook, that being part of the word ‘diverting,’ they have suffered.”

And Littledale, J., added:—

“They cannot recover by action for the lawful acts; they must have a mandamus for that. If part of the injury has been done under the powers of a statute, they cannot have their remedy for it by action at law.”

Injury must be
such as to give
action but for
statute.

New River Co. v.
Johnson.

But where the injury caused to the plaintiff is such as, if there were no statute authorizing the doing the act causing the injury, would not give the plaintiff a cause of action against the party doing such act, in such cases of course the plaintiff has no claim to compensation. In a case (*y*), therefore, where a waterworks company, in the execution of works authorized by their special act (which incorporated the Waterworks Clauses Act, which contains the usual compensation clauses), intercepted water which would otherwise have percolated through the earth into a well, and drained off water which had accumulated in the well, it was held that, inasmuch as no action would have lain against the company in respect of either quantity of water (*z*), supposing no act authorizing the execution of the works had passed, the owner of the well was not entitled to compensation. And Cockburn, C. J., said:—

“The recent decisions have fully established what is also the common sense of the matter, that these acts of Parliament, while they give to parties a means of obtaining compensation, must at the same time be taken to mean that, while they give compulsory powers authorizing interference with the rights of property, and while they take away the right to bring actions, the parties injured should not be damaged by the right of maintaining actions being taken away. But unless something is done which would be actionable if it were not for the compulsory powers given by the act, there is no right to claim compensation.”

A similar decision had been previously made in Ireland (*a*).

But not where in-
jury common to
all Queen's sub-
jects.

Where, however, the injury is common to all the Queen's subjects, an individual who suffers particular injury is not entitled to claim

(*y*) *New River Co. v. Johnson*, 29 L. J. (M. C.) 93.

(*z*) *Chasemore v. Richards*, 7 H. L. C. 349; 29 L. J. (Exch.) 81; *Acton v. Blundell*, 12 M. & W. 324; *R. v. Metropo-*

litan Board of Works, 32 L. J. (Q. B.) 105; 8 L. T. (N. S.) 239; *Hodgkinson v. Ennor*, 32 L. J. (Q. B.) 231.

(*a*) *Galguy v. Great Southern and Western R. Co.*, 4 Ir. C. L. Rep. 456.

compensation unless his injury exceed that to the rest of the public. This was decided in *R. v. Bristol Dock Co. (b)*, which was an application for a mandamus to defendants to assess compensation to the applicants for injury sustained in consequence of the dock works. The applicants were brewers, holding a brewhouse at Bristol for a long term of years. At the time of passing the Dock Act, 43 Geo. 3, these premises were supplied with water fit for brewing from the Avon, which water was brought by pipes communicating with the river at low water mark, at which time it was pumped into the brewery; but by means of the works authorized by the acts of Parliament, the water at the point of communication with the pipes became brackish, by reason of which the applicants were obliged to abandon their premises; and they having applied, without effect, to the defendants to grant compensation, they now made this application. The Court asked whether, if any person before the act passed had done anything to deteriorate the water of the river, these parties could have brought an action as for a private injury to their property. Scarlett argued that they might, and that there were instances where persons, having acquired the right to use the water of rivers for their own purposes, had maintained actions against those who disturbed them in the enjoyment. But by Lord Ellenborough, C. J. :—

Compensation.

R. v. Bristol Dock Co.

River made noxious.

“Those were cases where the owners of the property by long enjoyment had acquired special rights to the use of the water in its natural state, as it was accustomed to flow, by way of particular easement to their own properties, and not merely a use which was common to all the king’s subjects. But here the injury, if any, is to all the king’s subjects; and that is the subject-matter of indictment and not of action; if the salubrity of the air were impaired in consequence of the docks, every inhabitant of the place might as well claim a compensation. For general injuries, common to all the subjects, the remedy is by indictment; but that, I suppose, is taken away by the act (which was admitted): then the act has taken away the only remedy which the law would have given for this general injury.”

Le Blanc, J. :—

“These persons have no more claim to compensation than every inhabitant would have who had been used to dip a pail into the river for water for the use of his horse.”

So in a case in the House of Lords (c), where a railway passed, within a few yards of a gentleman’s lodge, across a *public road*, form-

Caledonian R. Co. v. Ogilvy.

(b) 12 East, 429; and see *R. v. London Dock Co.*, 5 A. & E. 163, where it was held, that a publican was not entitled to compensation for loss of customers, consequent upon the destruction of houses and stoppage of thoroughfares, such inconvenience being one common in a greater or less degree to every inhabitant in the neighbourhood, and the necessary consequence of a lawful act. In *Chamberlain v. West End of*

London and Crystal Palace R. Co., 31 L. J. (Q. B.) 201, it is said that *R. v. London Dock Co.* was overruled by *R. v. Eastern Counties R. Co.* ante, p. 218. See *Chamberlain’s case* in Exch. Ch., 32 L. J. (Q. B.) 173; 2 Best & S. 605.

(c) *Caledonian R. Co. v. Ogilvy*, 2 M’Q. 229. See also *Wood v. Stourbridge R. Co.*, 16 C. B. (N. S.) 222.

Compensation.
Caledonian R. Co.
v. Ogilvy.
 Crossing public
 road on a level.

ing the chief access to his residence, although he was liable to constant stoppages by the closing of the gates on the level crossing, and the passing of trains frightened his horses, and terrified his visitors, particularly ladies; it was held, that these annoyances did not ground a claim of damages against the railway company, the inconvenience felt in such a case being one to which all the Queen's subjects are exposed, and for which no particular or individual remedy exists. It was also held, that it is a mistake to regard the proximity of a level crossing as injurious to an estate or residence, within the meaning of railway legislation. In giving judgment, Lord Cranworth, L. C., said:—

“The merits of this case involve a question of considerable importance, namely, whether a proprietor, who holds land adjoining a newly-constructed railway, can, under the clauses of the general act and the special acts which give him a right of compensation in respect of any injurious effect upon his lands, claim from the company compensation because at a short distance from the entrance to his grounds the railway traverses an important public road upon a level.

“The map which both parties here have referred to, and which we may take, therefore, as accurately representing the state of the ground, shows that at a short distance (whether of forty-nine yards or fifty-nine yards is immaterial) from his gate, the railway does traverse upon a level a public road, which, though not the only approach, is yet the most common and the best approach to his house. He claimed compensation, and the sheriff's jury returned a verdict for 300*l.* in respect of land and freestone, and for 560*l.* in respect of severance and level crossing, but without distinguishing how much had been assessed for the severance and how much for the level crossing. The question is, whether it was competent to the sheriff to give any redress in respect of this level crossing. And, my lords, I am of opinion, that no compensation can be claimed or legitimately given on this head of complaint.

“These acts of Parliament are, as is unfortunately too often the case, loosely worded; but the construction that is put upon this expression ‘injuriously affected,’ in the clauses in the act of Parliament which gives compensation for injuriously affecting lands, certainly does not entitle the owner of lands, which he alleges to be injuriously affected, to any compensation in respect of any act which, if done by the railway company without the authority of Parliament, would not have entitled him to bring an action against them. I purposely guard myself by putting it in that way, because I am far from admitting that he would have a right of compensation in some cases in which, if the act of Parliament had not passed, there might have been not only an indictment, but a right of action. And the necessity of so guarding myself is made apparent by the case of *Greashy v. Codling* (*d*), which, if the law be applicable to a railway, would certainly entitle everybody, who is stopped for a minute whilst the gates are shut, to an action for damages, because it would be said, under the authority of that case, which I think is a very correct decision, that where an act is done, such as shutting gates across a public road without the authority of Parliament, that gives the parties a right of action. If, therefore, the act of Parliament did not mean to exclude the right of compensation in some cases in which, if the act had not passed, there would have been redress, every person who is stopped for a moment, while the gates of a railway are shut at a level crossing, would be entitled to an action.

(*d*) 2 Bing. 263.

"But I apprehend it is clear that in these acts of Parliament, the legislature means to authorize these public companies, for the convenience and advantage of the public, to do acts with regard to which they are not only relieved in respect of what they are doing from indictments at the instance of the public, or speaking more properly at the instance of the crown, but they are also entitled to do them without being liable to redress at the suit of individuals. That cannot be better illustrated than by the case which has been put by Mr. Anderson, that they are authorized to have a railway upon a crossing, having gates to prevent persons passing along the road at times when it would be dangerous, by reason of trains being near at hand. That necessarily, therefore, occasions a stoppage to persons, which, if there were not an act of Parliament, would entitle them to bring an action against the railway company. It is clear that the legislature meant to exclude any right of action in such a case as that.

Compensation.
Caledonian R. Co.
v. Ogilvy.

"Now, my lords, that being the case, suppose that without any act of Parliament having been passed for making this railway, certain speculators had taken upon themselves to make a railway across a public road, and had erected gates, certainly the owner of the estate might, with respect to any detention occasioned to him by the closing of those gates, bring an action against the makers of the railway; and as he might do this *toties quoties*, he would probably have more frequent rights of action than other subjects of her Majesty. But it would only be a more frequent repetition of the same damage; it would not be any damage different from that which might be sustained by any other subjects of her Majesty; for all attempts at arguing that this is a damage to the estate is a mere play upon words. It is no damage at all to the estate, except that the owner of that estate would oftener have a right of action from time to time than any other person, inasmuch as he would traverse the spot oftener than other people would traverse it.

"It appears to me, therefore, clear by the acts of Parliament and by the intention of the legislature, that there is no right of compensation whatever, for, except for any actual detention, no right of action would have existed, if the making of the railway had not been authorized by Parliament, and the detention caused by the necessary closing of the gates is certainly made lawful by the act.

"My lords, I consider this to be not only clear upon principle, but clear also upon the authority of the cases relating to this subject. The cases enunciating this principle are not indeed very numerous, and for this reason, I take it, that in the Courts of England it has been assumed that the principle is perfectly clear. It was so assumed in the case of *South Staffordshire R. Co. v. Hall (e)*. It is also adverted to by Lord Truro in *Gatthe's case (f)*. The same principle was also expressly referred to by Lord Cottenham, in *L. & N. W. R. Co. v. Smith (g)*, and the circumstance that, in many of those cases, the judges have expressed an opinion that there would probably be a right of compensation, not only affords no argument in favour of the respondents, but is an argument against them, because the grounds upon which the right of compensation in those cases have been put are grounds which in this case do not exist. In the case of *South Staffordshire R. Co. v. Hall*, there was a railway traversing a private road between a public road and a house, interfering with the easement which was possessed by the owner of that property. *Gatthe's case*, I think, was something of the same sort. Then there was the case of *R. v. Eastern Counties R. Co. (h)*, where compensation was held to be legitimately claimable. That was a case in which the owner of the land having his land adjoining what was before the passing of the act for making the railway a public

(e) 6 Railw. C. 389, ante, p. 222.

(f) 6 Railw. C. 371, ante, p. 222.

(g) 5 Railw. C. 717; 1 Macn. & G. 216,

ante, 224, note (b).

(h) 2 Railw. C. 736, ante, p. 218.

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road, with a gate that let him out into the public road, was, by the making of the railway, deprived of that road, and his gate was a gate up in the air so to speak. It was of no use to him, and therefore he was materially damaged. These were all cases of special and peculiar injury. It was the same in a case which was before me, and I think Lord Truro also, of a tunnel that was being made close adjoining a public-house, where deposits of wine and beer were kept. The proprietors of the house were damaged by the making of this tunnel (i). That was a personal and private injury to the land, and consequently to the owner of the land.

"Upon the merits of this case, therefore, I confess that I entertain no doubts whatever."

Unless the claimant sustain particular damage beyond the rest of the public.

Chamberlain v.
West End and
Crystal Palace
R. Co.

But if any one individual sustains private and particular damage beyond that sustained by the rest of the public, in respect of that damage he is entitled to compensation. This was in effect decided in the cases we have already considered, of altering public roads (k); but the principle was more emphatically laid down in the Exchequer Chamber, in affirming the judgment of the Court of Queen's Bench, in *Chamberlain v. West End of London and Crystal Palace R. Co.* (l). In that case, the plaintiff was the lessee of some houses situate on a high road, and the defendants, being authorized by their act to do so, made an obstruction and deviation of the road, by which that part of it running by the plaintiff's houses was no longer used as a high road, and the number of persons passing by the houses was greatly diminished, so that the houses were rendered less valuable as shops. And it was held that the plaintiff was entitled to compensation.

Rule does not apply where injury results to lands from acts done by company on a portion taken by the company.

Re Stockport,
Timperley and
Altringham R. Co.

The before-mentioned principle, that compensation cannot be claimed unless the damage result from an act done under the act of Parliament, and an action at law would have lain but for the act, does not, however, apply where compensation is sought for an injury to one portion of the claimant's lands arising from acts done by the company on another portion of the claimant's lands which has been taken by the company. Where, therefore, a cotton mill belonging to the claimant, situate near land taken from him by the company, became exposed to fire from engines passing along the railway on the land so taken, and could only be insured at an increased rate; it was held by the Court of Queen's Bench that the claimant was entitled to compensation in respect of the liability to pay such increased rate of insurance (m). And, in giving judgment, Crompton, J., said:—

"On the part of the company it was not denied that the premises were rendered less convenient and fit for the purposes of a cotton-mill, and that the saleable value of the mill was diminished by reason of what had been done by virtue of the provi-

(i) *L. and N. W. R. Co. v. Bradley*, ante, p. 225.

(k) *R. v. Eastern Counties R. Co.*, ante, p. 218; *Moore v. Great Southern and Western R. Co.*, ante, p. 219; and *Tuohey v. Same*, ante, p. 220.

(l) 31 L. J. (Q. B.) 201; aff. in Exch. Ch., 32 L. J. (Q. B.); 2 Best & S. 605. See also *Wood v. Stourbridge R. Co.*, 16 C. B. (N. S.) 222.

(m) *Re Stockport, Timperley and Altringham R. Co.*, 33 L. J. (Q. B.) 251.

sions of the act. But it was asserted that no action would have lain against any proprietor for damage from fire arising from the proximity of works or engines carried on and managed without negligence, and therefore that the case fell within the well-established rule, that compensation is only given by such acts of Parliament when what would have been unlawful and actionable but for an act of Parliament is permitted by the act of Parliament, and compensation therefore allowed in lieu and by reason of such right of action being taken away. I adhere entirely to the rule as laid down by my Brother Willes, in *Broadbent v. Imperial Gas Co.* (n), and in many other cases. But the question here is whether such rule is at all applicable to cases where part of the land is taken and compensation is given not only for the value of the part taken but for the rest of the land being injuriously affected either by severance or otherwise, and I am of opinion that the distinction pointed out by Mr. Manisty is correct, and that the rule in question does not apply to such cases. Where the damage is occasioned by what is done upon other land which the company have purchased, and such damage would not have been actionable as against the original proprietor, as in the case of the sinking of a well, and causing the abstraction of water by percolation, the company have a right to say, We have done what we had a right to do as proprietors, and do not require the protection of any act of Parliament, we, therefore, have not injured you by virtue of the provisions of the act; no cause of action has been taken away from you by the act. Where, however, the mischief is caused by what is done on the land taken, the party seeking compensation has a right to say it is by the act of Parliament and the act of Parliament only that you have done the acts which have caused the damage; without the act of Parliament everything you have done and are about to do in the making and using the railway would have been illegal and actionable,—and is therefore matter for compensation according to the rule in question.

Compensation.
Re Stockport,
Timperley and
Altringham R. Co.

“I think, therefore, that the distinction between cases where the land is taken and the cases of obstruction of light, rights of way, &c., by acts done on other land is well founded. This distinction is referred to by my Brother Blackburn in the recent case of *Chamberlain v. Crystal Palace R. Co.* (o), as having been taken in former cases.

“I am of opinion that the premises in question were injuriously affected within the section of the Lands Clauses Act as to compensation where land is taken, and that the jury have rightly included the damages for such injury in their verdict, and consequently that this rule for a *certiorari* should be discharged with costs.”

And a jury have no right to assess prospective or future damages, since the extent of damage cannot be ascertained till after the damage has been actually inflicted. This was decided in the following case (p), sent by Lord Lyndhurst, C., to the Court of Exchequer:—The plaintiffs, the Lake Loch Railroad Company, had completed a railway upon the river Calder extending about three miles, towards

Lee v. Milner.
Future damage.

(n) Ante, p. 216, note (k).

(o) Ante, p. 238.

(p) *Lee v. Milner*, 2 M. & W. 824. It is to be observed that in this case the plaintiff had peculiar privileges and a right to come from time to time for damages; but under the Railways and Lands Clauses Acts, the party claiming compensation must bring forward his claim in unity, and at once

claim all the compensation he thinks the law will give him. Per Erle, C. J., in *Chamberlain's case*, 32 L. J. (Q. B.) 178. See further *Thicknesse v. Lancaster Canal Co.*, 4 M. & W. 472; *Jubb v. Hull Dock Co.*, 9 Q. B. 443; *Broadbent v. Imperial Gas Co.*, 26 L. J. (Ch.) 276; *R. v. Aire and Calder Navigation*, 30 L. J. (Q. B.) 337.

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certain collieries, and on which considerable traffic was carried on. The Aire and Calder Navigation Company, of which defendants were trustees, were empowered by several acts of Parliament to improve the navigation of the Calder. By the 9 Geo. 4, c. xcvi, they were empowered to make new cuts, and also a railway, to extend from one of the said intended new cuts at Stanley Ferry, to communicate with a turnpike road leading from Leeds. The statute authorized the navigation company to enter upon the lands of any person, making satisfaction, in manner thereafter mentioned, to the owners, &c.

By the 20th section, if the parties could not agree as to the compensation, a jury should be summoned, "and such jury shall inquire of, assess and ascertain the sum of money to be paid for the purchase of such lands, &c., and also what other separate and distinct sum of money shall be paid by way of recompense, either for the damages which shall or may before that time have been sustained as aforesaid, or *for the future temporary or perpetual continuance of any recurring damages* which shall have been so occasioned as aforesaid, and the cause or occasion of which shall have been only in part obviated or repaired by the said undertakers, and which can or will be no further obviated, repaired or remedied by them." By sect. 27 it was enacted, "that the juries shall award all determinations which they shall give, concerning the value of lands, separately and distinctly from any damages sustained or to be sustained as aforesaid, and shall distinguish the value set upon lands, and the money assessed or adjudged for such damages as aforesaid, separately and apart from each other."

By sect. 110, if the undertakers should not within five years agree for, or cause to be valued and paid for, the lands, &c., then and from thenceforth such powers were to cease. By sect. 111, if the intended works should not be completed, so that boats and carriages might pass along the whole line, within fifteen years, then, after the expiration of the said term of fifteen years, all the powers were to cease, save only in respect of so much (if any) of the works thereby authorized as should have been completed and made navigable and passable within the said fifteen years. The statute also enabled the company to pay money into the Bank, if the owner of any land refused to accept the same for compensation. The case stated that the projected railway, extending from Stanley Ferry to the turnpike road, had been staked out, but no part laid down; that the company had paid for the whole of the land, except the piece now in question, which formed a portion of the Lake Loch Railway. (The case then set out the notice given by the undertakers to the Lake Loch Company, of their readiness to treat for the sale of the piece of land, and the other notices preliminary to the summoning of a jury to assess the value.)

In pursuance of such last-mentioned notice an inquiry was held at the sessions, and upon that inquiry the jury gave their verdict as follows, viz.—

Eight perches of land, value	£6
Present damages	0
Future damages	£2,800

The undertakers objected to that part of the finding whereby the jury assessed the sum of 2,800*l.* for future damages; nevertheless the justices pronounced their judgment according to the finding. The undertakers paid the sum of 6*l.* into the Bank, whereupon the company obtained an injunction to restrain the undertakers from entering upon the land. One of the questions now submitted was, whether defendants could take the piece of land without paying the sum of 2,800*l.* (q).

Lord Abinger, C. B., said:—

“The verdict in respect of these contingent and imaginary damages, which may never occur at all, is a mere nullity. The true construction of the act is, that the ‘recurring damages’ must be taken to mean *ejusdem generis* with those which have already arisen; it being open to a party, when a new description of damage ensues, to have a new remedy, either by action or, if the act justifies it, by a jury. In the latter case, if, when the company commenced their operations (the land having previously been valued and paid for), their tramroad shall be found to do damage to the adjoining lands of the Lake Loch Company, or in the making of it they shall obstruct the passage on the Lake Loch road, or continually obstruct the cross roads, so as to prevent the traffic upon them, then the parties so damaged may apply for compensation under that particular head, and obtain it. But in this case the jury have found no damage yet sustained; how then can they find a verdict for contingent damages, which may never occur at all? As, for example, what would be the case if the company were not to make the tramroad, but having taken and paid for the land, were to leave it in its present condition for ever?”

Lord Wensleydale said:—

“It seems to me that the jury have no right to assess prospective damages, except after (if I may so say) an example of damage has already occurred; that is in accordance with the language of the section, and I think it would be impossible for the jury fairly to perform their duty without having such an example to go by. The undertakers have a right either to treat with the parties interested in the lands, or to go before a jury. Then the provision respecting the jury is this: that ‘they shall inquire of, assess and ascertain the sum or sums of money to be paid for the purchase of such lands, grounds, &c.; and also what other separate and distinct sum or sums of money shall be paid by way of recompense, either for the damages which shall or may before that time have been sustained as aforesaid,’ *i. e.* which shall or may before that time have been sustained by the execution of any of the powers thereby granted—that is, something that is actually done, something that is completed; but not only for that but also ‘for the future temporary or perpetual

(q) The validity of the finding of the jury was discussed in the Queen’s Bench (see *R. v. Inhabitants of West Riding*, 1 Ad.

& E. 563), but the Court came to no decision. See remarks on this case, *Jubb v. Hull Dock Co.*, 9 Q. B. 443, post, 252.

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continuance of any recurring damage which shall have been so occasioned as aforesaid ;' *i. e.* the cause of which shall exist in the execution of the powers of the act. The cause of the damage must, therefore, have existed in something more or less done or completed by the company. And there is a further limitation to cases where the cause or occasion shall have been only in part obviated or repaired by the undertakers, for that must be the fair reading of the clause, and 'which can or will be no further obviated, remedied or repaired by them.' The cause of injury, therefore, must exist in some work of the company which is already then done ; and that work must be in such a state as to be incapable of further alteration, so as to obviate the damage. That being the case, and there being a permanent subsisting cause, and the work being incapable of beneficial alteration, so as to prevent mischief to others, then, and then only, have the jury the power of computing the future damage. That is fair and reasonable ; there is a permanent cause ; they know how often the injury may accrue, and what it is at present ; and from these data they have the power of making a contingent assessment of damages. I would put, as an example, the case of leakage through the bank of the canal, or the interruption of some watercourse, the effect of which you can collect from a bygone time, so as to afford some proper estimate with regard to future time. And it is in that case only, as it seems to me, that there is power to assess future damages. Whenever the Lake Loch Company do receive any actual injury from the works of the undertakers, by the interruption of their trains from moving along the road, and so often as they receive any injury, they will have a right to call upon a jury to make compensation to them."

Bolland and Alderson, Js., concurred.

Penny v. South-Eastern R. Co.
Injury to amenities.

Nor is a landowner entitled to compensation for every kind of disturbance or inconvenience caused by the construction of a railway, though the value of his habitation be deteriorated, the comfort diminished, and the amenity destroyed ; nor, would it seem, for injury to a house from the concussion and vibration caused by the running of trains on the line after completion (*r*). In a case (*s*), therefore, in which a sheriff's jury had granted, in one lump sum, compensation to the owner of a house, upon a claim in respect of the constant noise and shaking, and annoyance by day and night, caused by the passage of trains, and from the circumstance of the back windows and garden being overlooked by persons on the railway platform, and the privacy thereby invaded, the Court of Queen's Bench granted a certiorari to remove, for the purpose of quashing, the inquisition ; Lord Campbell saying :—

"The test is, whether, before the railway act passed, authorizing the company to do what has been done here, an action would have lain at common law for what has been done and for which compensation has been claimed. If it would, and that act is authorized by the railway act, compensation may be claimed in respect of it : if the land is not taken and nothing is done which would have afforded a cause of action before the act passed, then, although it may produce a deterioration of the property, it does not injuriously affect the land and constitute a ground for compen-

(*r*) See *Croft v. L. and N. W. R. Co.*, ante, p. 174, note (*x*).

(*s*) *Penny v. South-Eastern R. Co.*, 26 L. J. (Q. B.) 225 ; 7 E. & B. 660.

sation. The undersheriff told the jury that they ought to give compensation for the claimant's ground being overlooked and his privacy being disturbed: for that an action would not have lain. Compensation might just as well be claimed if a mound had been constructed half a mile off, and it cut off the view of a fine wood or a church."

Compensation.
Penny v. South-
Eastern R. Co.

And if a landowner has not actually sustained damage, and there is no reason to apprehend that he will sustain damage, notwithstanding his being nearer to the possible cause of injury than the rest of the public, he has no peculiar position or claim to entitle him to become the redresser of a public grievance, or to complain of the disregard of the provisions of an act of Parliament. Proceedings in such a case must be taken on the part of the public by indictment, or in equity by information by the Attorney-General. In a case (t), therefore, which has already been referred to, in which a canal company having power by act of Parliament to raise an embankment to a certain height, exceeded that height, and the plaintiff, fearing that his lands might thereby be flooded, filed a bill for an injunction, his bill was dismissed; the Lord Chancellor saying:—

Possibility of
damage not suffi-
cient.

Ware v. Regent's
Canal Co.

"The language of Lord Eldon in *Blakemore v. Glamorganshire Canal Co.* (u) certainly appears to sustain the proposition of the plaintiff to its fullest extent, but I adopt the interpretation of that language by Baron Alderson, in *Lee v. Milner* (x), and with him I say that these acts 'ought to be treated as conditional powers given by Parliament, to take the lands of the different proprietors, through whose estates the works are to proceed. Each landowner, therefore, has a right to have the powers strictly and literally carried into effect as regards his own land, and also to require that no variation shall be made to his prejudice, in the carrying into effect the bargain between the undertakers and any one else.' The words 'to his prejudice' may mean not only to his possible but actual prejudice, and Lord Eldon himself seems to have qualified and explained the generality of his own language, by one of the issues in *Blakemore v. Glamorganshire Canal Co.*"

And where there is an original equity affecting the claim to compensation, as where the landowner has entered into an agreement as to the compensation he is entitled to, a Court of Equity would interfere to stay by injunction proceedings to obtain compensation under the Lands Clauses Act. This appears from the following case (y):— Damages were claimed for injuries done to a brewery, by the erection of a new market, under an act of Parliament which incorporated the Lands Clauses Act. The damages claimed were—first, for narrowing a street bounding the brewery; secondly, for temporary obstruction of the thoroughfare; and thirdly, for obstruction of the access of light and air, and contracted ventilation. This last damage did not appear to have been complained of or discovered until the new

Proceedings to
obtain compen-
sation stayed by
injunction where
claim affected by
an original
equity.

Duke of Norfolk
v. Tennant.

(t) *Ware v. Regent's Canal Co.*, 28 L. J. (Ch.) 153; 3 De G. & J. 212; 23 Beav. 575; ante, p. 227.

(u) 1 Myl. & K. 154.

(x) Ante, p. 239.

(y) *Duke of Norfolk v. Tennant*, 16 Jur. 398; 9 Hare, 745.

Compensation.
Duke of Norfolk
v. Tennant.

market buildings had arisen to a considerable height. The defendant, the owner of the brewery, gave one notice, embracing all the three heads of complaint, to proceed by arbitration, according to sections 25 and 68 of the Lands Clauses Act. There had been a treaty for compensation for the two former heads of damage, but it did not appear to have been completed and carried into effect. There had been no treaty for compensation as to the third ground of complaint. Under these circumstances, Sir G. Turner, V. C., granted an injunction to prevent the defendant from proceeding under the notice he had given. His Honor said:—

“I am of opinion that there is a sufficient cause for the injunction. The questions which were raised as to the frame of the pleadings and the jurisdiction of the Court were, that the bill alleged that the defendant had received compensation for the injury occasioned by the street having been obstructed and narrowed, and that this allegation brought the case directly within the principle of *Gatthe's case* (z). But although this bill is not in this respect so aptly framed as it might have been, I think, upon the whole, the fair meaning of it is, not that the agreement has been completed and carried out, and the satisfaction perfected; but that the defendant has received consideration for an agreement which he refuses to perfect; thus opening the case for specific performance. And although the bill does not pray that relief, I think the facts are sufficiently stated for a decree to be founded upon them; and the case being thus opened upon the pleadings, I am of opinion that *Gatthe's case* does not affect the present question. That case has overruled *L. and N. W. R. Co. v. Smith* (a), and has settled, on most satisfactory grounds, that this Court ought not to interfere by injunction to restrain parties, who insist that their property has been injuriously affected within the meaning of the 68th section of the Lands Clauses Consolidation Act, from prosecuting their claims according to the provisions of the act, upon the mere ground that the act has not provided the means of determining the preliminary question, whether the property has been injuriously affected or not; but it has settled no more. Whether the same rule would apply to a case in which there are several grounds of claim, some of which have been satisfied, remains yet to be determined; and not having had the benefit of a full argument upon that point, I shall not determine it. At all events, the case does not touch the question of the interference of this Court, where there is an original equity affecting the claim. The case decides that where there is no original equity affecting the claim, the statute does not create such an equity; but where there is such an original equity affecting the claim, the statute does not, in my opinion, take it away. Being of opinion that the plaintiff in this case has sufficient grounds for contending that some at least of the claims of the defendant are affected by contract, entered into before the claims were advanced, this injunction must be granted. It was urged by the defendant that it ought to be so limited as to extend only to the claim for obstructing and narrowing the street; but having regard to the provisions of the act, as to costs, I think it cannot be so limited. The defendant, if he thinks it right to prosecute the claim as to obstruction of light and air, before the equity of the present bill is determined, must give a fresh notice for the purpose.”

And where acts done by the company are not necessary for the construction of their works, it may be that persons damaged thereby

(z) 3 Macn. & G. 155, ante, p. 222.

(a) 1 Macn. & G. 217, ante, p. 224 note (b).

are not entitled to compensation. Where, therefore, the Hungerford Market Company pulled down a house which they purchased; and in doing so, ascertained that the party-wall of the adjoining house was of an insufficient thickness, whereupon the company took proceedings under the Metropolitan Building Act, and the wall was rebuilt; it was held, that the occupier of the adjoining house was not entitled to receive compensation for damages sustained by loss of trade, &c., whilst the wall was rebuilding (*b*), Lord Denman, C. J., saying:—

Compensation.

R. v. Hungerford Market Co.

No compensation for works not within Act of Parliament.

“The company have only exercised an ordinary right: finding that a house, adjoining one which they had purchased, had an insufficient party-wall, they, as any purchaser might have done, enforced the provisions of the Building Act. It is true that the pulling down of the house was an act done in pursuance of the statute; so was every act, even to the minutest, done by the company in the course of these works; but it would be going very far to say that on that account the 68th section [the compensation clause] applied to everything that was so done. The only question here is, whether the particular act from which the damage immediately proceeded was in pursuance of the statute. I think it was not, but that the company merely exercised the right which belonged to any purchaser.”

So where the same company purchased a house, No. 11, and pulled it down, and thereby caused damage and inconvenience to the occupier of No. 12, it was held, that the occupier of No. 12 was not entitled to receive any compensation, (in the absence of negligence,) it appearing that No. 11 was purchased by the company under an agreement made with the owner; and neither No. 11 nor No. 12 being mentioned in the schedule annexed to the company's act (*c*).

Where damage arises from the construction of works not authorized, or from the negligent construction of works which are authorized, or from exceeding the powers given by the special or general acts of Parliament, in such cases the parties injured are left to their common law rights, and may maintain actions against the company, provided of course that the injury is such as would support an action against an individual. “The distinction is now clearly established between damage from works authorized by statute (where the party generally is to have compensation, and the authority is a bar to an action), and damage by reason of the work being negligently done, as to which the owner's remedy by action remains” (*d*).

Action for unauthorized, negligent, or excessive acts.

(*b*) *R. v. Hungerford Market Co.*, 1 A. & E. 668.

(*c*) *Ibid.* 676.

(*d*) *Per* Crompton, J., in *Brine v. Great Western R. Co.*, 31 L. J. (Q. B.) 101; 2 Best & S. 402, where the plaintiff having declared for flooding his house by an embankment, and the defendants having pleaded their acts of Parliament, it was

held to be no departure for the plaintiff to reply negligence. It has been held that a railway company dwell within the meaning of the County Court Act, where they carry on their general business, and not at every station, and therefore the L. and N. W. R. Co. cannot be said to dwell at Chester, but in London. *Brown v. L. and N. W. R. Co.*, 4 Best & S. 326.

Compensation.
Turner v. Sheffield and Rotherham R. Co.

Upon this principle, in a case (*e*) in which a railway act contained the usual clauses as to compensation, and also a proviso that nothing therein contained should authorize the company to take or injure any house not specified in the schedule; it was held, that an action could be maintained against the company to recover damage caused to a house not specified in the schedule, in consequence of dust and obstruction of light arising from the erection of a railway station and embankment at a place adjoining to the house. In giving judgment, Lord Wensleydale said:—

“The plaintiff is entitled to judgment. The question turns on the 20th section of the act (*f*): adopting the ordinary grammatical construction of the clause, the company could neither take the house in question, nor do any act by which it should be injured; and such construction certainly ought to prevail, unless it leads to an absurdity, or be manifestly repugnant to the intention of the legislature, as collected from the context, in which case the language may be modified, so as to obviate such absurdity, or cure such repugnance. The argument, which brought before us all the material clauses of the act, and pointed out some inconveniences arising from construing the proviso according to the ordinary sense of its words, has failed to convince us that this construction is repugnant to the rest of the act, or that any absurdity would follow if it were adopted. There is no doubt some inconvenience to the company in their being exposed to actions for unforeseen consequential damages, arising from their acts to houses, &c. not comprised within the schedule. On that point, however, we pronounce no judgment. But in such a case as this, in which the damage could have been foreseen when the station and embankment were made, we see no reason to qualify the words of the clause, and, consequently, the company are liable to this action.”

Similar principles were acted upon in the following case, where lands were injured by flood waters penned back by a railway embankment (*g*).

Lawrence v. Great Northern R. Co.

The plaintiff was lessee of certain lands under C., and brought this action for an injury to his land, by its being flooded, as he alleged, by the fault of the defendants in constructing their railway across the lands of other persons, without leaving sufficient openings for the passage of flood waters, whereby they were obstructed and penned up, and forced upon the lands of the plaintiff. The defendants pleaded that, before the plaintiff had anything in the lands now in his occupation, they gave notice to C. to purchase certain lands of his, adjoining to those now of the plaintiff; that it was referred to an arbitrator to fix the amount of the purchase-money, and of com-

(*e*) *Turner v. Sheffield and Rotherham R. Co.*, 10 M. & W. 425; 3 Railw. C. 222. Where actions of this sort are referred at nisi prius, the only costs allowed are the ordinary costs as between party and party. *Eccles v. Mayor of Blackburn*, 30 L. J. (Exch.) 358.

(*f*) Sect. 20. Provided that nothing in the act should authorize the company to

take, injure or damage, for the purposes of the act, any house or building, &c., except such as were specified in the schedule.

(*g*) *Lawrence v. Great Northern R. Co.*, 16 Q. B. 643; 6 Railw. C. 656; 20 L. J. (Q. B.) 293. See also *Re Ware*, 9 Exch. 395, 402; *Brine v. Great Western R. Co.*, 31 L. J. (Q. B.) 101; 2 Best & S. 402.

compensation for injury to the lands and other estates of C., by severance or otherwise, and to determine what bridges, arches, culverts, &c. should be made; that he awarded 7,990*l.*, and directed what should be constructed; that the money was paid, and the works directed were done. A verdict having been found for the plaintiff: upon an application to the Court of Queen's Bench to enter a verdict for the defendants, on the ground that the action was not, under the circumstances, maintainable, Patteson, J., said:—

Compensation.
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"The main point in the case is, whether the compensation referred to in the pleadings relates only to all damage known or contingent, by reason of the construction of the railway on the lands purchased of C., and to other damage arising from the construction of the railway at other places, which was apparent and capable of being ascertained and estimated at the time when the compensation was awarded; or whether it embraces also all contingent and possible damages which might arise afterwards, by the works of the company at other places, and which could neither be foreseen nor even guessed at by the arbitrator. The proposition that it was to be taken to embrace such damages is so startling, that we should expect some express provision to be pointed out to that effect, either in the general acts relating to railways, or the special act under which this railway was constructed, or the instrument of reference. We have examined all these, and are not only unable to find any such express provision, but any clause whatever which can fairly have any such interpretation put upon it. We are therefore clearly of opinion that the compensation must be taken in the restricted sense contended for by the plaintiff.

"But it is contended by the defendants, that they have constructed their railway according to the provisions of their special act, 9 & 10 Vict. c. lxxi, and are not liable for any consequences which may follow to the damage of the plaintiff. The railway passes across the low lands adjoining the river *Dun*, over which the flood waters of that river used to spread themselves. These low lands were separated from the plaintiff's land by a bank, constructed under certain drainage acts, and which protected the plaintiff's land from floods. By the construction of the defendant's railway without sufficient openings, those flood waters could not spread themselves as formerly, and were penned up and flowed over the bank on the plaintiff's land. *Prima facie* this would give the plaintiff a cause of action; and the question is, whether the company are protected by their act. Now, the 162nd section obliges them to make openings when the railway crosses any public drains, embankments or works made in any drainage district, but it is silent as to flood waters.

The 163rd section, indeed, obliges them to make openings for flood waters in another district in another county, and it is relied on by the defendants, on the principle '*expressio unius est exclusio alterius*;' and certainly, so far as any remedy by mandamus or otherwise, to compel them to make openings for flood waters in the *Dun* district, might be attempted to be enforced, the act would not warrant it. The company may have been at liberty under the act to construct their railway across the low lands in the manner they have done; but it does not follow that, in case an unforeseen injury arises to any one from the mode in which it is constructed, they are not liable to an action.

"It was, indeed, held in *R. v. Pease* (*h*), that where an act of Parliament authorized the making of a railway parallel and near to a highway, the company were not answerable for injuries sustained in consequence of horses passing along the highway being frightened; but there the proximity to the highway being expressly

(*h*) 4 B. & Ad. 30. See also *Vaughan v. Taff Vale R. Co.*, 29 L. J. (Exch.) 247.

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authorized by the act, and the railway being used in the proper and ordinary manner, it was impossible to hold the company responsible, without in effect repealing the act of Parliament. Here *the company might, by executing their works with proper caution, have avoided the injury which the plaintiff has sustained*; and we think that the want of such caution is sufficient to sustain the action. The rule to enter a verdict for the defendants must be discharged."

Broadbent v. Im-
perial Gas Co.
Injunction
granted.

Upon similar principles, in a case (*i*) in which a gas company made gas so as to cause a nuisance to a market-gardener, although they were authorized by their special act to make gas, yet, as the Gas Companies Clauses Act, which was incorporated in their act, contains an express proviso that nothing in the private act contained shall authorize the company to make or supply gas in any way so as to cause a nuisance by it, and an arbitrator to whom an action brought had been referred had found that the gas was a nuisance; Lord Cranworth, L. C., granted a perpetual injunction, to prevent the company working in such a manner as to be injurious to the plaintiff; and his decision was upheld in the House of Lords.

Bagnall v. Lon-
don and North-
Western R. Co.

The following case (*k*) also was decided on similar principles. The facts sufficiently appear in the judgment, delivered by Bramwell, B.:

"The material facts of this case are as follows. The plaintiffs are owners and occupiers of a coal mine: the surface soil as well as the coal below formerly belonged to the same owner, but a railway company (to whose rights and obligations the defendants have succeeded) took the surface, under the powers of a special act of Parliament, for their railway, and constructed it thereon. The railway company (by which may be understood indifferently the original company or the defendants) cut and removed upwards of twenty feet in thickness of the surface over where the plaintiffs' mine now is, to get the level at which they laid their rails: this surface soil was clay impervious to water; by removing it a porous rock was reached; the soil was in like manner cut away by the railway company along the length of the line to a district of country through which a brook flowed: here the railway was on or above the natural level of the ground; it was carried over the brook by a flat bridge; the line of railway sloped downwards from the bridge to a part over the plaintiffs' mine; the bridge was sufficient to let the ordinary water of the brook pass, and even more, but was found an impediment to the passage of more in large floods; the railway company was bound to make and maintain drains, the obligation being the same as in the Lands Clauses Consolidation Act. A flood happened in 1860, and the result of the combined acts of the company was, that water, part of which would have escaped but for the bridge, flowed down the railway, and the high ground between the brook and the surface over the mine being removed, it reached that spot, and the high ground and protection of clay then being gone, and the drains being imperfect as after mentioned, it permeated into the mine; so also did the water falling on the spot itself and the springs arising in the cutting. But it here becomes necessary to mention, that when the railway was making, the mines

(*i*) *Broadbent v. Imperial Gas Co.*, 26 L. J. (Ch.) 276; 7 De G., M. & G. 436; 29 L. J. (Ch.) 377; 7 H. L. C. 600; and see *Ware v. Regent's Canal Co.*, 28 L. J. (Ch.) 153; 3 De G. & J. 212; 23 Beav. 575; ante, p. 243.

(*k*) *Bagnall v. L. and N. W. R. Co.*, 7 H. & N. 423; 31 L. J. (Exch.) 129; aff. in Exch. Ch. 480; 1 H. & C. 544, where Willes, J., distinguished the case from *Caledonian R. Co. v. Lockhart*, 3 M'Q. 808.

were not worked under nor within forty yards of the railway; the railway was made with drains at the side, sufficient to carry off the water which fell or came there without doing any mischief as matters then stood; when the plaintiffs' workings came to forty yards from the railway, they gave the defendants notice under the local act, which may be treated as substantially the same in its provisions as the Railways Clauses Consolidation Act. The defendants, however, did not purchase the mines. The plaintiffs accordingly worked on, and when their workings came under the railway, from no fault or negligence of theirs, but as a natural consequence of fair and lawful working, the railway sank and continued to do so from time to time. The defendants repaired this by throwing material of a porous character on the sunken parts; they did not, however, repair and puddle the drains, which from the sinking of the soil became inefficient, and even had they been efficient, they would not have carried off the flood water of August, 1860. For the damage sustained from the water thus getting into the mines, this action was brought. It seems to us impossible to state these facts, without showing that the plaintiffs have a claim on the defendants of some kind. Without any fault of theirs the natural condition of things had been altered. The water of the brook, which flowed at a distance of one-third of a mile from their mine, inaccessible to it by being separated from it by ground twenty-five feet high, has been diverted over it; its natural covering and upper soil having been removed from it. From the last-mentioned circumstance, and the want of efficient drains, the rain which fell upon it and the springs which rise in the cuttings have got into it. These are the acts of the railway company alone. It is said that the plaintiffs have brought about the mischief by working their mines, but they have a right to work them as they did. They lose no right by doing so. It could not be contended, that had the defendants thought fit to agree to purchase, they could have done so at a nominal price, on the plea that if the plaintiffs worked them they would be worthless, as they would be drowned. We do not say that the defendants were bound to restore the surface; they might have diverted their line and left hollows over the spot in question, but they were bound by their act to make and maintain effectual drains. This reasoning applies to water other than at the time of the flood. As to that, the plaintiffs' case is still clearer. Suppose, instead of the defendants' railway passing through a cutting and over a brook, it had been a branch railway belonging to a private proprietor and joining the defendants' railway just before reaching the plaintiffs' mine, would not such a private proprietor have been clearly liable to this action? and if so, why are not the defendants? As to the flood-water, they are not sued merely as a railway company who have taken the surface of the plaintiffs' land, but as persons who, by their acts on lands at a distance, have done this injury; and it seems to us they would be liable for the damage by flood-water, if the plaintiffs had continued owners of the surface, and for some reason had thought fit to remove it to the depth the railway company has here, for it would still be the acts of the defendants that sent the water there. But it was suggested, that if the plaintiffs had a claim, it was to be enforced under the compensation clauses. We think not. The plaintiffs are not injuriously affected by the works of the railway company. Supposing the company had possessed no statutory powers, they could not have been restrained by injunction from executing any of those works, nor could any action have been maintained against them simply for their construction. The railway company would have been entitled to say these are not injuries, and never will be. By means of puddling the surface and drainage, no water will ever reach you, nor need it as appears. It is not, therefore, the works intrinsically which injuriously affect the plaintiffs, but the defendants' wrong conduct in relation to them in not making and maintaining outlets for the flood-water or damming it off the plaintiffs'

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land, or covering the surface thereof with clay, and in not maintaining those drains which were efficient to carry off the rain which fell, and the spring water which arose there. Our judgment, therefore, is for the plaintiffs in respect of both of these claims."

2. *Compensation on Claims made by Lessees of Lands.*

The right of tenants or lessees of lands, &c., to compensation for damage or injury to the lands in their occupation by the construction of railways (*l*), depends on the Lands Clauses Consolidation Act (*m*), and the sixth and sixteenth sections of the Railways Clauses Consolidation Act (*n*). The mode of assessing and recovering compensation is pointed out by the Lands Clauses Consolidation Act.

The sections in that act specially applicable to lands subject to leases are sects. 119, 120, 121 and 122 (*o*).

The terms of sect. 68 (*p*) are indeed very general, and if that section stood alone it would include every case in which compensation could be claimed, including the case of a tenant at will or from year to year. But the application of it is restricted by the subsequent clauses, which make express provision for certain cases, and in those cases the mode of proceeding must be that which is pointed out by the section specially applicable. Where, therefore, a person has no greater interest in premises *actually required* by the company than as tenant for a year or from year to year, he is (in the absence of any agreement to refer the matter to arbitration which would be binding (*q*)) confined to the remedy given by sect. 121, viz., the determination of two justices, and is not entitled to have his claim settled by arbitration under sect. 68 (*r*). But the case of a tenant from year to year, the possession of whose property is not wholly or partially required to be given up, but is merely *injuriously affected* by the execution of the works of a railway, is within the large words of the 68th section, and not within the restrictive words of the 121st section (*s*). Such a person may therefore proceed to assess the compensation to which he is entitled under sect. 68.

(*l*) The tenant is entitled to compensation before the company take possession. *Inge v. Birmingham, Wolverhampton and Stour Valley R. Co.*, 3 De G., M. & G. 658, 666.

(*m*) 8 & 9 Vict. c. 18, post, Appendix, 45.

(*n*) 8 & 9 Vict. c. 20. See these clauses, ante, p. 209, and in the Appendix, pp. 75, 78.

(*o*) See these sections, ante, p. 211, and in the Appendix, p. 67. See also 8 & 9 Vict. c. 20, s. 43, ante, p. 205, as to compensation to occupiers for damage arising from temporary occupation.

(*p*) Ante, p. 192.

(*q*) *Collins v. South Staffordshire R. Co.*,

7 Exch. 5; *R. v. Manchester, &c. R. Co.*, 4 E. & B. 103.

(*r*) *R. v. Manchester, Sheffield and Lincolnshire R. Co.*, 4 E. & B. 88, where the schoolmaster of a free grammar-school was held within sect. 121. *Knapp v. London, Chatham and Dover R. Co.*, 32 L. J. (Exch.) 236. It has been held, in Ireland, that a landlord has no lien upon his tenant's compensation money, if paid into Court. *Ex parte Carey*, 10 L. T. 37. See also, *Ex parte Kelly*, 12 Ir. Eq. Rep. 398. And as to the tenant's costs, *Marquis of Drogheda v. Great Southern and Western R. Co.*, 12 Ir. Eq. Rep. 103.

(*s*) *R. v. Sheriff of Middlesex*, 31 L. J. (Q. B.) 261.

In cases, however, within the limits of the Metropolitan Railway Act it is, to meet this difficulty, specially provided (*t*) that—

“All claims for compensation made upon the company under the provisions of the acts relating to the Metropolitan Railway, or any of them, or any act incorporated therewith, shall, if the person claiming to be entitled to compensation has no greater interest than as tenant for a year or from year to year, in the lands in respect of which the compensation is claimed, be determined in manner provided by the 121st section of the Lands Clauses Consolidation Act, 1845.”

Compensation.
Cases within limits of metropolitan railway acts.

There are similar provisions in the acts passed in 1864 (*u*), relating to the Metropolitan, the North London, and the Great Eastern Railways.

There are very few reported cases upon the construction of the above-mentioned sections of the Lands Clauses Act as to lessees. It is therefore proposed to lay before the reader some few cases which have arisen under other special acts of a similar nature. Several cases arose upon the construction of the act incorporating the Hungerford Market Company. That act gave compensation to any tenant from year to year who might sustain injury “in respect of any interest whatsoever, for goodwill, improvements, tenants’ fixtures, or otherwise;” and it was held, that a tenant from year to year, whose tenancy had been put an end to by a legal notice to quit, was entitled to compensation, it appearing that she had been many years in possession under an assurance from her landlord that she should hold the premises as long as she paid her rent. But where a tenancy was for one year, determinable at three months’ notice, ending with the year, with a stipulation against underletting, except with the lessor’s leave, it was held that no compensation was recoverable (*v*).

Ex parte Farlow.

And where a lessee for years, whose term had expired, obtained leave from the company to hold the premises until they were wanted; it was held that his undertenant from year to year was entitled to receive compensation when he quitted possession (*w*).

R. v. Hungerford Market Co.

In another case (*x*) P. held premises under an agreement for one year, and afterwards to quit on three months’ notice at any quarter-day. He was not to underlet or give up possession to another, or make any alterations, without consent of his landlord, and was to leave for his landlord’s benefit all improvements or additions made during his occupation. He made certain improvements, and was afterwards ejected upon due notice to quit: it was held that he was not entitled to compensation for such improvements under the Hungerford Market Act.

Re Palmer and same Co.

And, under the same statute, the assignee of a lessee for years was also held to be entitled to compensation for the loss of his chance of a

R. v. Same Co.

(*t*) 26 & 27 Vict. c. clxv. s. 18.

(*u*) See them referred to, post, Ch. VI., Sect. 1.

(*v*) *Ex parte Farlow*, 2 B. & Ad. 341.

(*w*) *R. v. Hungerford Market Co.*, 4 B. & Ad. 592.

(*x*) *Re Palmer and Hungerford Market Co.*, 9 A. & E. 463.

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renewal of the lease ; but not for losses incurred in respect of fixtures and improvements (*w*).

*R. v. Liverpool
and Manchester
R. Co.*

In a case (*x*) which arose under a special railway act, by which compensation was to be paid for land, &c., taken for the purposes of the act, and also for damage, loss and inconvenience sustained by the owners or occupiers, "such damage to be settled separately from the value of the lands;" and the act also required tenants at will and lessees for years to give up the possession on notice, but gave such tenants and lessees compensation for the value of their unexpired terms; it was held that a lessee for seven years, who received due notice to quit at the expiration of the lease, was not entitled to receive compensation for the loss of his chance of a renewal, although the lease had been several times renewed by the owner, and the tenant had made improvements on the faith of a further renewal being made. And Lord Denman said:—

"It certainly requires very comprehensive words to include such an interest as this, if interest it be. It is merely a hope of renewal on the old terms, which, if there has been an improvement, were not likely to be granted where there would have been a competition. This is different from the case of a sale, and also from the case under the Hungerford Market Act (*y*), where the words antecedent to 'goodwill' had exhausted the legal interest."

*Jubb v. Hull
Dock Co.*

In a case under a special dock act, which provided that the jury summoned to award compensation for the loss of property taken by the company should deliver their verdict for the money to be paid for the purchase of the lands required for the works, and for the money to be paid for the injury done to the lands of the party by the severance of such lands, and for the money to be paid by way of compensation for the damage occasioned to such lands by the execution of the works, whether for damage sustained before the injury or for future damage, either temporary or permanent; it was held that it was competent for the jury to award compensation for the damage "which the party will sustain by reason of his having to give up his premises as a brewer, until he can obtain suitable premises in which to carry on his business" (*z*).

*R. v. Southamp-
ton R. Co.*

If a tenant from year to year, who receives a notice requiring him to quit before his term expires, chooses voluntarily to remain on the premises after his term has expired, he cannot then claim the compensation he would have been entitled to receive if he had obeyed the first notice (*a*).

Ex parte Nadin.

And it has been decided that a tenant from year to year, who has received a proper notice to quit, cannot claim any portion of the compensation paid to his landlord. This was decided upon a petition

(*w*) *R. v. Hungerford Market Co.*, 4 B. & Ad. 596.

(*x*) *R. v. Liverpool and Manchester R. Co.*, 4 A. & E. 650; 6 N. & M. 186.

(*y*) *Ex parte Farlow*, ante, p. 251.

(*z*) *Jubb v. Hull Dock Co.*, 9 Q. B. 443; 11 Jur. 15.

(*a*) *R. v. Southampton R. Co.*, 10 A. & E. 3; 1 Railw. C. 717.

under the Lands Clauses Consolidation Act and the Manchester Market Act (b). Under the latter, the corporation of Manchester had taken a house and land, in the occupation of D., as yearly tenant, which were the property of N., as owner of the fee. In September, 1846, N. gave D. notice to give up possession on the expiration of six months, namely, at Lady-day, 1847. On the 23rd of March, 1847, an agreement was entered into by N. with the corporation for the purchase of the premises, free from incumbrances, for 3,900*l.* D. did not give up possession of the house at the expiration of the notice, and the corporation had paid the 3,900*l.* into the Bank, according to the provisions of the Lands Clauses Act. This petition was presented by N., praying that the 3,900*l.* might be paid to him upon the execution of a proper conveyance.

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Ex parte Nadin.
Tenant not entitled to portion of compensation paid to landlord.

D. contended that, as his tenancy was interrupted in consequence of the premises being required by the corporation, he was entitled to receive part of the compensation money.

The petition was first heard before the Vice-Chancellor, who ordered that a sum of money should be paid to D., on account of his claim to compensation, and for his fixtures, &c., together with his costs, and that the residue of the 3,900*l.* should be paid to N.; but upon appeal Lord Cottenham said:—

D. had not shown any right to remain in the occupation of the property after the expiration of his tenancy, which was determined by the notice, and therefore he had not shown any ground for claiming compensation. The whole amount which had been paid into Court belonged to N., and the order of the Vice-Chancellor must be varied: and he ordered that, upon the execution of a conveyance to the corporation, the whole amount should be paid to N.

In a case (c) in which a dock act empowered the company to excavate lands, stop up streets, and pull down houses, and provided, by sect. 89, that any person “having an estate or interest in any house, not less than a tenancy from year to year,” who should be injured in his “estate or interest,” should be compensated; it was held that the occupier of a public-house, the business of which had been lessened by the removal of the houses in the neighbourhood, was not entitled to compensation in respect of such an injury. In delivering judgment Lord Denman said:—

R. v. London Dock Co.

“The question is, have the company, by the making of the cut, &c., injured the complainants *in their estate or interest in these premises*? In the argument for the affirmative, much stress was not laid upon the loss of neighbourhood; indeed, it is clear that the company, having become the lawful proprietors of the site, had full power to pull down the houses, to keep it uninhabited, or to turn it to any use, not

(b) *Ex parte Nadin*, 17 L. J. (Ch.) 421.

(c) *R. v. London Dock Co.*, 5 A. & E. 163; 2 Har. & W. 267. In *Chamberlain v. West End of London and Crystal Palace R. Co.*, 31 L. J. (Q. B.) 201, this case is said to be

overruled by *R. v. Eastern Counties R. Co.*, ante, p. 218, and see *Chamberlain's case*, affirmed in the Exch. Ch., 32 L. J. (Q. B.) 173; 2 Best & S. 605.

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Dock Co.

a nuisance, which yet might deprive the tradesmen in the vicinity of many advantageous customers. It was conceded, also, that an injury merely to the goodwill of the premises, as a public-house, was not, as a substantive injury, within the words of the section; but it was alleged, that the stopping up of any public way, by which the occupier or his customers, local or casual, had the most convenient and direct communication with his house, and the compelling them to go by a circuitous or less convenient route, was an injury to such occupier in his estate and interest in such house; and, that being so, the amount of the usual resort, before and since the act of stopping, might be considered as showing the quantum of damage sustained. *Wilkes v. Hungerford Market Co.* (d) was relied on, but it has no bearing on the present case. There the act producing the injury was unauthorized by any statute. Here, the act is in its full extent authorized; and it was impossible to make the basin and cut without destroying the neighbourhood, and stopping up these thoroughfares. This necessary consequence must have been foreseen; and, if *it had been intended to give any compensation for it, considering its very large and indefinite extent, it is hardly to be conceived that language should have been used so hypothetical, and so vague in its meaning, as the language of the 89th section would be, if so extended.* But the language of the section is apt, and its hypothetical form proper, if we read it as intended to provide for the contingent and unforeseen, *but direct injury*, which might or might not be occasioned by some positive act of the company, as if by their cut, or bridge, or any other work, they had *weakened the foundation, darkened the lights, stopped the drains, or done any similar injury to the houses of any person having an estate or interest not less than a tenancy from year to year*, the object of which limitation plainly appears to have been to exclude the vexatious claims likely to be made by persons having no permanent interest, on account of trifling inconveniences which might be sustained in the progress of the works. We are therefore of opinion that the claim cannot be sustained."

Wainwright v.
Ramsden.

Where a tenant from year to year, whose half-year's rent was payable on the 1st of October, 1838, quitted the premises on the previous 28th July, in obedience to a notice he received from a railway company who required the premises, but neglected to claim compensation, although he was entitled to receive it:—It was held, that he was liable to pay rent to his landlord up to the 1st of October (e).

Thicknesse v.
Lancaster Canal
Co.

Where a company purchased land for a canal, on which the plaintiff had an easement (a right to use a railroad):—It was held, that the plaintiff could not maintain an action on the case, and that the company might enter on the land without first making compensation to the plaintiff; and secondly, that compensation was due under the act, after actual injury had been sustained (f).

Lister v. Lobley.

In another case (g), which was an action of trespass for destroying

(d) 2 Bing. N. C. 281; S. C., 1 Hodges, 287.

(e) *Wainwright v. Ramsden*, 5 M. & W. 602; 1 Railw. C. 714. See *Tasker v. Bullman*, 3 Exch. 351.

(f) *Thicknesse v. Lancaster Canal Co.*, 4 M. & W. 472.

(g) *Lister v. Lobley*, 7 A. & E. 124. See observations on this case made by Wigram, V. C., ante, 201. In *Peters v. Clarkson*, 7 M. & G. 548; 8 Scott, N. R. 384, it appeared that by the highway act (5 & 6 Will.

4, c. 50, s. 67), surveyors or way-wardens are empowered to make drains on lands adjoining any highway, upon paying the owner for the damages sustained thereby, to be settled and paid as the damages for getting materials in inclosed lands are therein directed to be settled and paid. The power of getting such materials is given by the act (sect. 54)—the said surveyor making such satisfaction for the materials, and also for the damage done to such lands, as shall be settled and ascer-

plaintiff's buildings, the defendant justified under a local turnpike act, 5 Will. 4, c. xxxvi. Sect. 25 empowered trustees to make the said road through any lands or hereditaments, &c., and for such purpose it should be lawful for the trustees to enter upon such lands, &c., and also to pull down the houses, &c., in the schedule annexed, "making or tendering satisfaction to the owners or proprietors of all private lands, houses, buildings, tenements and premises, so taken or used for the same, or for any loss or damage they may sustain thereby." On the trial, it appeared that the premises in question were private lands and buildings, comprehended in the schedule; that the plaintiff held them for a term of years; that the defendants had taken the lands and pulled down the buildings, and had made satisfaction to the owner of the fee; but no compensation had been tendered to the plaintiff. After verdict for the plaintiff, a rule was obtained to set it aside, on the grounds, 1st. That plaintiff was not entitled to receive any compensation; 2nd. That if he was entitled, he ought to have proceeded under the statute to enforce it; and, lastly, that trespass would not lie. But Patteson, J., said:—

"I entertain no doubt that the words 'owners or proprietors' include tenants for terms of years, and that such tenants are to receive compensation for 'any loss or damage they may sustain.' The plain meaning must be, that any person who suffers is to have satisfaction. It has been argued that compensation is to be given to the landlord for all loss, and that the landlord and tenant are to settle between themselves. I should assent to this, if I could find any clause enabling the tenant to recover in this way; but as there is no such clause, and as it could not have been intended to leave the tenant without remedy, I must infer that the meaning was, that every owner, *reddendo singula singulis*, should receive satisfaction for his own share."

Lord Denman, C. J., said, on a subsequent day:—

"On the second point, the rule must be absolute. The amount of compensation cannot, generally, be ascertained till the work is done. The effect of the words in question is, that they shall not do it without being liable to make compensation."

And Williams, J., added:—

"Words authorizing trustees to enter lands and remove buildings, making or

tained by order of the justices, at a special session for the highways. The act directs (sect. 109) that no action shall be commenced against any person for anything done in pursuance of the act, until twenty-one days' notice thereof has been given, nor after sufficient satisfaction or tender of satisfaction has been made, and in case of an action being brought, if the matter appears to have been done under the act, or if it appears that such action was brought before twenty-one days' notice thereof, or that sufficient satisfaction was made or tendered, the jury shall find a verdict for the defendant. The Court of Common Pleas held, that, under these provisions, tender

of satisfaction for damage done in making a drain was not a condition precedent to the right of entry on the land. Also, that the amount of satisfaction could only be ascertained by the justices at a special session, and that assuming it to be the duty of the way-warden to apply at a special session for the purpose, there was no time limited for his doing so; and that the notice of action would not create such a limitation; and lastly, that tender of satisfaction before action brought is not required in cases where the way-warden has complied with the provisions of the act.

(h) See *Fenton v. Trent and Mersey Navigation Co.*, 9 M. & W. 203, ante, 229, n.(q);

Compensation.

Lister v. Lobley.

Turnpike trustees were authorized to pull down certain houses specified in a local act, "making or tendering satisfaction to the owners or proprietors of such houses:—Held, first, that a lessee for a term of years, as well as the owner in fee, of the premises, was entitled to receive compensation.

Secondly, that trespass would not lie, where the trustees pulled down a house, before compensation was tendered; but that the proprietor ought to have proceeded to assess the compensation in the manner provided by the act (h).

Compensation.

tendering satisfaction, cannot render them trespassers *ab initio*, if they omit to make or tender it."

Senior v. Metropolitan R. Co.

Lessee entitled to compensation for loss of trade.

And it has been held by the Court of Exchequer (*i*), (mainly upon the authority of *Chamberlain's case* (*k*), and their decision has been followed both by the Queen's Bench (*l*) and the Common Pleas (*m*),) that a person who was lessee for three years of a house and shop which had sustained no structural damage was entitled to compensation for loss of trade caused by the stoppage of a highway; Pollock, C. B., saying: "Loss of profits by loss of business is a loss to the goodwill of the business, and the goodwill is part of the value of the property." It was also held by the Court of Exchequer that the company had no right to set off an ultimate possible benefit to the plaintiff's premises against the present pecuniary loss caused by the obstruction (*n*).

3. Compensation in other Cases.

Mode of assessing compensation in respect of a reversion, where the reversioner made no application until many years after the expiration of the time limited in a local act for assessing compensation. *Semble*, that the judge in Chancery may take upon himself to assess the compensation in such a case (*o*).

A company of proprietors, by agreement among themselves, made a navigable cut through certain lands on lease for sixty-five years. In 1794, an act of Parliament was passed for making the Swansea Canal; the cut which was previously made was adopted as a part of the undertaking to be made by the act, but no steps were taken under the act, or otherwise, to purchase the reversionary interest of the lands comprised in the lease, and this part of the canal was held under the lease, until its expiration in 1844. The estate of the original lessor, who was one of the projectors of the original cut, and

R. v. North Midland R. Co., 2 Railw. C. 1, ante, 233.

(*i*) *Senior v. Metropolitan R. Co.*, 32 L. J. (Exch.) 225; 8 L. T. (N. S.) 544.

(*k*) Ante, p. 238.

(*l*) *Ricket v. Metropolitan R. Co.*, Q. B. E. T. 1864. This case stands for argument in Exch. Ch.

(*m*) *Cameron v. Charing Cross R. Co.*, *Bowhill v. Same*, 16 C. B. (N. S.) 480; 10 Jur. (N. S.) 635; 10 Law T. (N. S.) 381; 4 New Rep. 150. *Cameron's case* also is taken to the Exch. Ch.

(*n*) This decision accords with the principle of *R. v. Ward*, 4 A. & E. 834 (overruling *R. v. Russell*, 6 B. & C. 566); *R. v. Betts*, 16 Q. B. 1037; and *R. v. Train*, 31 L. J. (M. C.) 169.

(*o*) *Duke of Beaufort v. Patrick*, 22 L. J. (Ch.) 489. In another case where there were no commissioners in existence, who alone could award compensation, the Judges of the Queen's Bench differed in opinion, as to whether the compulsory powers of the act could be exercised. It appeared that the act empowered certain persons to make the river Kennet navigable, and to dig and cut through the banks of the river, and to erect in the river, and upon

the lands adjoining, weirs, pens, dams, &c., and to do all matters and things necessary for making, maintaining, or improving the navigation, the undertakers first giving satisfaction to the owners of such lands, weirs, &c., as the commissioners named for the purpose should direct, in case the undertakers should not beforehand have agreed with the proprietors of such lands and hereditaments concerning the same. By another section, commissioners were appointed to mediate between the undertakers and the owners of lands and hereditaments intended to be made use of, and to settle satisfaction for such portion of the lands as should be cut, digged, or made use of; and a provision was made for filling up vacancies in the body of the commissioners. If any person should sustain damage in his mills by the owners of the navigation taking away or diverting the water, or any similar injury, the commissioners should, by a jury impanelled as therein directed, assess such damage and award compensation to the party injured. The proprietors of the navigation obstructed the water flowing to the defendant's mill, by the erection of a dam, under the powers of the act. All the commissioners

consented to its being made, was afterwards sold, and was purchased by the ancestor of the defendants, who, upon the expiration of the lease, brought an action to recover the land, and obtained a verdict (*p*); upon which the plaintiff, who was the proprietor of the canal, and who alone had the power of levying tolls under the Canal Act, filed a bill to restrain all further proceedings at law for the recovery of the lands, and to obtain a conveyance to confirm his rights under the Swansea Canal Act, and to assure the possession of the canal to him, upon payment of a compensation under the Canal Act; or that the defendants might be restrained from interfering with the plaintiff's right as an easement, and from preventing him from maintaining or using the canal through the lands.

Compensation.
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Sir J. Romilly, M. R., said:—

"It is admitted, that at law the defendants are entitled to this portion of the land covered by the canal.

"The question is, whether there has been such an appropriation of this land to the public, as binds the defendants in equity from disputing it; and if this be established, whether the defendants are entitled to any compensation, and, if any, on what principle. The plaintiff contends that, inasmuch as the lands were included in the maps and books of reference, and were part of the lands authorized to be taken, and as everything that was done is found to have been done with the full consent, and in accordance with the wishes, of the owners and proprietors, which class includes J. B. P. (the owner of the reversion of the lands in question), he must be taken to have dedicated this land to the public for the purpose of this undertaking, and that this will bind the defendants who claim under him. It is contended also, that in no view are the defendants entitled to recover possession of the land: for that, even if it be held that J. B. P. did not dedicate the land to the undertaking, still that the only claim which the defendants can enforce is to be paid a fair and reasonable compensation. The defendants contended, first, that there has been no appropriation to the public of this portion of the canal. Secondly, that nothing which has taken place has been done in such a manner as to affect J. B. P. Thirdly, that even if J. B. P. be bound, the defendants do not claim under, and are in no respect affected by his acts. On the point whether J. B. P. is bound by what took place, it is contended by the plaintiff, on the principle of *Dann v. Spurrier* (*q*), that he, who stands by and encourages an act, cannot afterwards complain of it, or interfere with the enjoyment of that which he has permitted to be done. This, as a general proposition, is not disputed by the defendants, but they draw the distinction to be found in *Master, &c., of Clare Hall v. Harding* (*r*), and *Pilling v. Armi-*

appointed under the act had died, and there were no commissioners in existence, by whom compensation could be assessed. Under these circumstances, Wightman, Erle and Crompton, Js., were of opinion that the powers of the proprietors to raise weirs for the necessary purposes of the navigation did not cease by reason of the right of the mill owner to recover compensation for consequential damages, through the commissioners, being lost, but Lord Campbell, C. J., was of opinion, that the power to raise the weir and cut off the water flowing to the defendant's mill could

only be exercised during the continuance of the body of commissioners, and that, upon their extinction, the extraordinary powers of the proprietors ceased. *Kennet and Avon Canal Navigation Co. v. Witherington*, 21 Law J. (Q. B.) 419; 18 Q. B. 531.

(*p*) See *Doe d. Patrick v. Duke of Beaufort*, 6 Exch. 498; 20 L. J. (Exch.) 251. Also *Dimes v. Grand Junction Canal Co.*, 9 Q. B. 469; *Cator v. Croydon Canal Co.*, 4 Y. & C. 405; 8 Jur. 277.

(*q*) 7 Ves. 231.

(*r*) 6 Hare, 273; 17 L. J. (Ch.) 301.

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tage (s), where it is held, that the encouragement given to a lessee will not affect the reversion, or give the lessee, or any one claiming under him, any additional rights, because he knew what his title was, and what his length of tenure in the land was; the permission, therefore, given by the landlord to the lessee cannot bind or affect his reversion. I concur in this principle, but it is not applicable to this case. A cut or private canal has been made by the lessees, with the sanction of J. B. P. This could not bind his reversion, and at the end of the term he might recover his land: but this canal was not of the dimensions required by the act, although it was, when improved and widened, to form a portion of it. J. B. P. had full knowledge of the Swansea Canal Act, and of everything relating to it; his name is mentioned as a proprietor in the act. This extension and improvement of the canal also took place by an arrangement between the duke and the lessees, for the purpose of making it correspond with the rest of the canal: and an arrangement was made between them as to the division of the tolls to be taken by the duke under an agreement in 1797. It is expressly found by the special verdict, that everything done by the duke was with the full consent and approbation of, and in accordance with, the wishes of the owners and proprietors, of whom J. B. P. was one. It would, therefore, be contrary to the principle of equity to which I have referred, if I were to confine this consent to the arrangement between J. B. P. and his tenant, by which the original cut was made, and to permit J. B. P., the owner of the property, who had sanctioned the improvement and widening of the canal through his land, and who had known and approved of the division of tolls which could only be levied by the authority of that act, to assert that he meant this permission to be temporary, only until the lease to one set of the parties to the agreement had concluded; and although the act pointed to permanence, to allow him to insist on a right to destroy that canal, and put an end to the very thing of which he had approved. I am of opinion, therefore, so far as J. B. P. is concerned, and so far as regards any persons claiming through him, that he and they must be held bound to this extent, that he is not entitled to obtain possession of the land covered by the canal, or to interrupt or interfere with its use.

“The next question is, whether the defendants are bound by the act of J. B. P.”

His Honor having discussed this question, said:—

“Although I am of opinion that the defendants cannot be allowed to obtain possession of that portion of the canal, and to interrupt the traffic upon it, yet they must be entitled to receive some fair and reasonable compensation for their interest in the land, which this Court, in the circumstances of the case, will not allow them to take possession of.

“The next question is, on what principle is that compensation to be ascertained? It cannot be ascertained under the powers of the act; for it enacts that the commissioners shall neither be obliged nor allowed to take notice of complaints of persons injured, unless made within three calendar months next after the damage shall have been sustained; and I think it would not be possible to call out the powers of the commissioners. I must, therefore, myself determine on what principle the compensation is to be assessed. I think that the compensation cannot be fixed on the principle of what the value of the reversion was in 1797. The duke, under whom the plaintiff claims, might then have ascertained that value under the powers of the act, and have paid or tendered it to the persons entitled. He cannot obtain any advantage by having abstained from so doing; he has, in fact, taken and paid for (either in money or by the agreement of 1797) the residue of the lease of 1779, so

far as it comprised land covered by the canal: but he has not paid for the reversion subject to that lease, and he has waited for this purpose till the lease has expired. Until that period had arisen there was no mode by which the purchasers of the reversion could have enforced payment. If, under the 44th section, they were bound to complain within three months, they could not have proceeded by injunction, because they had sanctioned the making of the canal, and after it was completed the use of it would not have been waste. It is true that they might, within three months after the completion of the canal, have applied to the commissioners for compensation, and so also might the duke. Possibly the smallness of the sum prevented them mutually from having recourse to this process; but the same principle must regulate the decision of the Court, whether the value of the reversion be large or small. During the whole of the time that has elapsed, the money which ought to have been applied in paying the owner of the reversion has been in the pocket of the duke and of those who have claim under him, and during the whole of that time also the reversion in the property has been gradually increasing in value. It is true that the plaintiff cannot be charged on the principle of compound interest, but he has waited till the property he requires for the use of the canal has ceased to be reversionary, and is therefore increased in value as it now exists. It appears to me that the present case is analogous to what occurs under the modern Railway Acts. The company has power to take additional land at a future time for a station or some other purpose. They do not feel at first the want of it, and they delay taking it for several years; in the meantime the value of the land has risen. The company must, in my opinion, pay for such increased value, although, if they had taken the land when they had first the power of doing so, they would have paid less than one-half of the increased value. The circumstance that the railway company had bought up the interest of a lessee in the property, and had allowed the lease to expire before coming to any arrangement with the lessor, would not alter their rights or enable the company to say to the reversioner, you shall receive now only the price for which the reversion might have been bought when the company took the lease.

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"I am of opinion, therefore, that the plaintiff must pay for the value of the land at the time when the reversion fell in. At the same time I am of opinion that the defendants are entitled only to be paid the fair and reasonable value of the land, including the minerals, as if the same were not wanted for the purpose of the canal, —not a fanciful amount, based upon calculations of possible advantages not in existence, or upon any supposed diminution of advantage to the rest of their property, under what is usually called 'severance.' I am of opinion that I ought to fix the amount myself, and not send it to any other tribunal to ascertain the value. I propose, therefore, to require the plaintiff and the defendants to lay before me evidence of the value in September, 1844, when the lease of the land occupied by this portion of the canal expired; and I am of opinion that it ought to be estimated as if it were a piece of land of that size and shape lying perfectly detached from the rest of the defendant's land, having no unusual advantages of position; and of the agricultural value of the land adjoining the canal. When this is done, either by agreement between the parties, or by my decision on the evidence laid before me, I will make a decree, ordering that, upon payment of the sum so ascertained, and interest upon it from 1844, the defendants are to execute all proper conveyances of the land so taken."

In a case (t) in which a railway company purchased a subsisting lease of certain lands, and then gave the reversioner in fee notice

Mouchet v. Great
Western Railway
Company.

(t) *Mouchet v. G. W. R. Co.*, 1 Railw. C. 567.

Compensation.

that a jury would be summoned to assess compensation to him for his interest in the lands; and the reversioner, who contended that the company had no authority to take more than a portion of the lands, applied for an injunction to restrain the company from summoning a jury:—the Vice-Chancellor refused the injunction.

Hillcoat v. Archbishops of Canterbury and York.

The following is an important case (*u*) as to the mode of assessing the value of a churchyard, under the provisions of a special act which authorized the company to take the yard under certain restrictions.

Mode of assessing value of churchyard.

The declaration stated, that by their act of Parliament the L. and B. R. Co. were not to interfere with a church or with the yard attached, without the consent of the Bishop of Chester, and payment by the company to the defendants of a sum to be agreed upon between the defendants and the company, in ascertaining which regard should be had to the cost of a site for a new church, and to the value of the yard. That, on payment by the company to the defendants of the sum so to be agreed upon, the said church and yard should vest in the company, and the sum so paid should be employed by the defendants in purchasing a new site, and paying the plaintiff for the value of the yard. It was then averred that a sum was agreed upon and paid by the company to the defendants, and thereupon the church and yard vested in the company, whereupon the bishop gave his consent; that the said sum was sufficient to purchase a new site, and also to pay the plaintiff the value of the said yard. Breach, non-payment of the value. It appeared that the defendants before action offered the plaintiff a sum which they had determined to be the value of the yard, which was consecrated ground, and, as such, its value to the plaintiff was less than it would be to the company when applied to secular uses. The judge directed the jury, that the act did not make the determination of the defendants conclusive on the plaintiff, and that, in estimating their damages, they were at liberty to value the ground as applicable to secular uses. On an application for a new trial, it was held that the direction given by the judge was correct.

Lord Truro, C. J., said:—

“The main point discussed upon the argument was the true construction of the 10th and 11th sections of the statute before mentioned. [These sections were read, and his lordship stated the facts proved at the trial.]

“It was now contended first, that the defendants were constituted and appointed arbitrators, with power to determine the value conclusively, as between the plaintiff and the company, of the ground and buildings not forming part of the site of the church, and that the jury ought to have been so directed. Secondly, that the jury ought to have been directed to estimate the value to the plaintiff of such ground and buildings as being irrevocably consecrated and bound to spiritual uses, and

(*u*) *Hillcoat v. Archbishops of Canterbury and York*, 10 C. B. 327; 19 L. J. (C. P.) 376.

incapable by the plaintiff of any other application. We are of opinion that upon the true construction of the statute, the defendants were not constituted and appointed arbitrators to determine conclusively upon the value of the property for which the plaintiff was entitled to be paid. The language of the statute does not warrant any such construction; the defendants were authorized to agree with the company as to the amount to be paid with reference to all the objects which the defendants were authorized to accomplish, and they had an unfettered discretion in regard to the amount which they should require to be paid, with very specific directions as to the sums which they would have to pay and disburse out of the amount which they should agree to accept.

“The second point was, that the jury had been misdirected upon the question of the damages. The alleged misdirection consisted in the jury being told that they were not bound to estimate the value of the ground and buildings, for which the plaintiff was entitled to be paid, as land irrevocably appropriated to spiritual purposes, of which the plaintiff could make no pecuniary advantage, but that it was competent to them to form their estimate of the value with reference to all the circumstances that had appeared in evidence before them; and the question being left upon the evidence in the cause to the unfettered judgment of the jury, the Court is of opinion that there was no misdirection. The question of value was clearly for the jury, and it may not be very plain by what precise rule or test the value should be estimated. The owner is to be paid the value, and that enactment is unaccompanied by any words of qualification or restriction, and there seems no reason for construing the words in any other than their ordinary sense and meaning. The act of Parliament was passed for the purpose of withdrawing the church ground and buildings from the spiritual appropriation, and applying them to secular uses; and in connexion with that determination, the duty was imposed of paying the owner the value of the ground and buildings not forming the site of the church, and, in the absence of any peculiar rule being prescribed for ascertaining such value, it is reasonable to infer that the value was to be ascertained in relation to the nature and situation of the property generally, and its applicability to ordinary purposes discharged of any prescribed appropriation. If the company thought they had any claim to take land to be used by them for secular purposes, but that the owner was to be paid only value estimated upon the footing of its being irrevocably appropriated to spiritual purposes, they ought to have asked Parliament for a distinct enactment to that effect, when the parties would have been heard upon it; but having obtained the power to take the property discharged of its spiritual appropriation, and to apply it to secular purposes connected with pecuniary profits, upon the terms of paying the value generally, or their right to insist upon having such value estimated by some peculiar and restricted test, is by no means obvious. By the appropriation of property to ecclesiastical or spiritual purposes, the owner voluntarily sacrifices the pecuniary value of the property so appropriated, but he makes that sacrifice to obtain an object which he estimates of greater value; but when that object is entirely withdrawn from him by the application of the property against his will to secular uses, and those uses connected with pecuniary profit, it does not seem consistent with justice to estimate the value to the owner upon the footing of its irrevocable appropriation to those spiritual purposes from which it has been already withdrawn.”

Rule discharged.

Compensation.

Hillcoat v. Archbishops of Canterbury and York.

*Report
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Compensation.*

4. *Report and the Evidence given before the Lords' Select Committee, on the Principle of assessing Compensation for Lands.*

During the Session of 1845, the House of Lords appointed a Select Committee to take into consideration the practicability and the expediency of establishing some principle of compensation to be made to the owners of real property, whose land, &c., may be compulsorily taken for the construction of public railways; and also further to take into consideration the question of severance, and that of injury to residences; and to report to the House. The following Report was made to the House:—

That the committee have met, and taken into consideration the various matters referred to them. They have summoned witnesses, not numerous, but of great practical experience in the dealings between the railway companies and the landed proprietors. In the evidence of all these witnesses, but more especially in those of Mr. Duncan, an agent of the Eastern Counties Railway Company, and of Mr. Cramp, a land valuer in Kent, will be found ample illustrations of the nature of the transactions between the parties.

Upon the questions of severance and damage, however, the committee are of opinion that it is impossible to establish any fixed rate upon which the damage arising from severance, and other injuries to property, can be assessed and compensated.

With respect to the land, &c., actually taken, the witnesses who were examined state, that, to the marketable value of the property taken, they add, in their valuations, a percentage, on the ground of the sale being compulsory. The amount of this percentage varies with the views of the different witnesses, whose evidence will be found in the Appendix; but the committee are of opinion that a very high percentage amounting to not less than 50*l.* per cent. upon the original value ought to be given in compensation for the compulsion only to which the seller is bound to submit, the severance and the damage being distinct considerations. In some of the evidence, especially of Mr. Duncan (post, 264), it appears to the committee that a very unfair view is taken of the injury done to proprietors, and of the compensation due to them.

The committee are of opinion that many cases occur in which it is necessary to consider the land, &c., not merely as a source of income, but as the subject of expensive embellishment, and subservient to the enjoyment and recreation of the proprietor.

Public advantage may require all these private considerations to be sacrificed; but as it is the only ground on which a man can be justly deprived of his property and enjoyments, so, in the case of railways, though the public may be considered ultimately the gainers, the immediate motive to their construction is the interest of the speculators, who have no right to complain of being obliged to purchase, at a somewhat high rate, the means of carrying on their speculation.

It is to be observed, that the price of the land purchased, and the compensation for that which is injured, form together but a small proportion of the sum required for the construction of a railway, so that no apprehension need be entertained of discouraging their formation, by calling upon the speculators to pay largely for the rights which they acquire over the property of others.

In the course of the committee's deliberations, the question of injury to mineral property, by the construction of railways over it, was very forcibly brought before

them; and they are of opinion, that (notwithstanding the improvement in the law relating thereto made in the present session) it is one that requires still further consideration.

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The committee are also of opinion—

1. That, before any road or canal, or railway or dock bill shall be read a first time, there be laid on the table of this House a statement of the length and breadth of the space which is intended or sought to be taken for the proposed works, and to give up which the consent of the owners of the land has not been obtained; together with the names of such owners, and the heights above the surface of all proposed works on the ground of each owner (*x*).
2. That a return shall also be presented at the same time of the names of the owners or occupiers of any houses situated within three hundred yards of the proposed works who shall have, before the 31st December preceding the introduction of the bill into Parliament, deposited written objections to the said railway, with the public officer appointed to receive the plans of the said railway within the parish or township in which their property is situate; or, if the railway should not be proposed to be carried through that township, in the one through which the railway is to pass in the manner objected to by the above-mentioned parties (*y*).
3. That where any party or parties have appeared and contested any such bills at the bar or in the committees of the House, it shall be lawful for the House or committees, if in their discretion they shall think fit, to direct the costs in whole or in part of such party or parties to be paid by the opposite party promoting the bill (*z*).

And the committee have directed the minutes of evidence taken before them to be laid before your Lordships.

The following are extracts from these minutes:—

29th May, 1845.—*The EARL FITZWILLIAM in the Chair.*

Mr. Charles Parker, law agent of the London and Birmingham Railway Company, examined:—

Can you give generally any information to the committee as to the number of years' purchase at which the land was purchased, keeping that question entirely distinct from the question of severance and damage?—I think it is hardly possible to give that information through the line. Generally speaking, those agreements are made in one gross sum; they are sometimes divided afterwards, but not by any means generally. Generally speaking, the compensation and the price of the land are mixed up together.

Have you any idea of what is the proportion between the severance damage and the value of the land?—That varies in almost every case. If you take the line at the side of a field, the damage is very inconsiderable, compared with going right through the middle of it, and the same with buildings. That makes a great variation in the compensation.

Have you ever built any farm buildings, in consequence of your going so near the old ones as to make them inconvenient?—We have frequently allowed money for it.

You have never done it yourselves?—No. I think that is always better done,

(*x*) Now provided for by Lords' S. O., No. 182, Sect. 10 (Session 1865).

(*y*) See Lords' S. O., No. 182, Sect. 10 (Session 1865).

(*z*) Parliament has not as yet adopted the last-mentioned recommendation of the committee.

and cheaper done, and more satisfactorily done, by the parties themselves; but I have had the buildings accurately valued, and then gone to the parties, and said, "That is the sum we are told it will cost; if you like to take that sum and lay it out yourself, we will pay you;" and I have found that generally preferred—I may say universally.

Although you cannot state how much is paid for severance, can you state about what proportion of the total price severance forms?—I think about half. It varies very much; but if you took the average of all compensations, I think it would come out at about half. I think that where 2,000*l.* is paid to a landed proprietor, in the generality of cases, about 1,000*l.* is for the land, and 1,000*l.* for the compensation. Of course, in many cases, where there is no severance, we do not expect to pay at the same rate, but we always pay a great deal more than the market value.

The severance made in the case of a house, or of a gentleman's park, would be infinitely greater than the severance in going over a field where a flock of sheep are kept?—Yes.

But you would pay a severance for the field?—Yes; we always pay an additional sum, either in the price of the land, or professedly for severance, in all cases.

Mr. John Duncan, solicitor to the Eastern Counties Railway, examined:—

Can you state the number of years' purchase which has been given by the company for the land required for the construction of the railway?—It has depended on circumstances. It has generally been thirty to thirty-five years' purchase, after getting at the net rent; but the question of compensation or severance, of course, varies in every case, according to the extent of damage done.

Do you think that you could inform the committee, by referring to documents in your possession, about the number of years' purchase which has been paid for land absolutely taken, as distinct from the questions of severance and damage?—I have no doubt of that.

Can you state the maximum and minimum which has been given with reference to compensation and severance?—No; there is certainly neither maximum nor minimum as guiding rules.

With reference to the value of the land, what has practically been the rule you have acted upon?—With reference to the value of the land, I know that the general rule we take in the country is to get as nearly as possible at the net rent paid, or the net letting value, and having got that, to give a certain number of years' purchase for the compulsory sale.

How many years' purchase?—I have said thirty to thirty-five.

Then afterwards you add to that, what will be required for compensation?—Yes.

In towns it is different. Where we go through property in towns, we do not give the same number of years' purchase for buildings as for land.

How many years' purchase do you give for buildings; for houses, barns and so forth?—That differs very much, according to the class of houses; it runs between twenty years and twenty-six years.

Do you pay for annoyance besides?—We pay for annoyance besides, where the party has property left beyond what we take. But where we take a particular owner's house, and he has no other house in the neighbourhood, we simply pay him the value of that house so purchased compulsorily: we give him more than the market value of it, because we have compelled him to sell it to us for our objects.

Was the dissentient party generally satisfied at last?—I should say certainly. They had only to employ an intelligent surveyor, and obtain satisfactory settlement through his means. There is no doubt that surveyors, from the practice of the

last ten years in railway matters, have become so conversant with every species of damage done by railways, and injuries done to landowners, that if a landowner chooses an intelligent surveyor he is sure to get his case protected. The surveyor goes upon the land, and he does not look merely at the land taken, but he looks deeply into present and future injury, and far off at every species of practical damage that may occur, and makes out the claim of the landowner; and then the surveyor of the company either consents to each item of claim, or disputes it; and they ultimately agree upon the full amount to be paid and all that is to be done by the company for the landowner.

However destructive to the comfort and happiness of an individual it may be to have a railway pass rather close to him, unless it goes over land that belongs to him he has no kind of claim?—I think it is so. I know that a case has occurred under our railway acts of Parliament, where damage was done to an adjoining owner; but he was not actually on the line; he was not in the book of reference. We had nothing to pay him for going over his land; we simply passed by him; and, in making a bridge approach, the road in front of his house was much raised, and we put him to positive inconvenience. I remember this case where the road was thus raised in front of a gentleman's house:—He used to go from his garden to the road upon a level, but after this alteration he had to come out of his garden-gate, and walk up three or four steps to reach the road. He was not an owner upon the line, and he contended unsuccessfully before arbitrators, that the company were bound to pay him compensation. But I know that since that case the courts of law have construed the railway acts so that any person placed in a similar position is entitled to compensation, and that he can go to a jury to settle what the compensation to be paid him should be (a). But if a gentleman's house is merely injured by the noise, or in respect of the sight of the railway, in matters of that kind I doubt very much indeed whether the act of Parliament would give compensation to such a party: you must have something more close in point of injury than that as groundwork for compensation. In the case I have mentioned, the raised road was quite close to the person's dwelling, and was an evident and palpable mischief to him; but in the case of the sight of the railway, or the noise of the railway trains or engine, or matters of that kind, those injuries are too far off from compensation for the acts of Parliament to reach them; at least I apprehend so. I apprehend, that unless the owner of a house, situated in the position of being annoyed by the sight or noise, was an owner upon the line, he would not be able to recover compensation.

You have as good a right to erect an embankment opposite a person's house, upon land which belongs to you, as any other owner would have to erect a house there?

—Yes, for the public object sanctioned by act of Parliament (b).

You say that you paid five or six and twenty years' purchase for a house: if you take the whole house and premises are any additions made to the value, for annoyance of removing?—Yes; we always ascertain what fixtures are destroyed.

Is any addition made for the annoyance of a person being compelled to change his domicile?—That is covered by the number of years' purchase. We give a higher rate than the market value, to cover the compulsory sale and the annoyance of moving.

You said just now that the average rate was twenty to twenty-six years for buildings: is that a rate which you consider higher than the market price?—Certainly it is, upon our line, where property is of a very low class indeed.

What should you consider the average market price?—It depends upon the class of property. I am speaking of houses in London; in Shoreditch and Spitalfields and thereabouts.

(a) See ante, 218.

(b) But see ante, 224, 245.

Can you state how many years, in addition to what you consider the market price, you are in the habit of giving for house property?—I believe, that to cover the compulsory sale and annoyance, and so forth, something like five or six years' purchase is added to the actual market value of the house.

Then the market value, according to that rate, would be about fifteen or twenty years' purchase?—It depends upon the property the railway goes through. In the property which the Eastern Counties Railway goes through at Shoreditch, the houses are of a very low description, and in those cases the property is not worth above fourteen or fifteen years' purchase.

And it depends also upon the state of repair of the property?—Certainly.

In the case of large houses in the country, fifteen to eighteen years' purchase would not describe their value?—It would not. It depends upon the class of tenants, and whether there is a lease. There are a great many details which must be looked at in the valuation of a house. If the house has not had a tenant for three or four years, you cannot get the same for it as you can if a tenant has a lease of it for fourteen years, who is a responsible tenant.

Besides which, is not it the fact that a large country house never pays a rent equal to its cost? For example, suppose a house cost 10,000*l.*, it would not let for above 200*l.* a year in the country.—Very likely not.

Therefore thirty years' purchase upon such a rent as that would be a very inadequate sum to pay?—There is no doubt, that if a railway company takes a house that has cost 10,000*l.*, they do not pay 10,000*l.* for it; they only pay what could be got for it, what it would sell for, together with the additional compensation for taking it compulsorily.

But supposing you turn the proprietor out of his house?—Parliament does it.

Ought you not to pay him for it?—We do compensate him to the full extent of its value, and a good deal more. If he wants to preserve his house, and to prevent its being taken for a public work, he must go to Parliament, and beg their protection for his house. Parliament gives the company leave to go through it, on paying what it is worth.

Then his only way of protecting himself is to get the bill thrown out?—To get the bill thrown out, or to make the company deviate.

He may be quite certain that you will not pay the full value of the house?—We will not pay what it cost. There would be no end to that; we might pay the most fanciful prices.

Supposing a person had spent 10,000*l.* upon building a house, and he had not been able to live in it since he had built it, but that he had let it to a tenant, and he had not been able to get for it, at the end of five or six or ten years since it had been built, more than 100*l.*, 200*l.*, or 300*l.* a year, should you compensate him upon the principle of taking the value of the property at what it had cost him, namely, 10,000*l.*, or should you compensate him upon the principle of taking the value of the property at the sum it let for, whether it was 100*l.*, 200*l.*, or 300*l.* a year?—There is no doubt that we should take it upon the latter principle, adding anything to the price that we thought ought to be paid; and if we are in error there is a tribunal to appeal to, namely a jury, to settle whether he is right, or whether the company be right. The jury give him as much as they think fit, and we are obliged to pay what the jury award. If, upon the evidence given, they choose not to adopt our valuation, but instead, that of the house owner, we are obliged to submit to the verdict; but he is obliged to submit to it, if the jury take the company's view.

In a case where a railway goes in front of an old ruin, for instance, Gervoise Abbey, or Bolton Abbey, or any other well known abbey, and goes near it, so as to

spoil entirely the picturesque effect of the abbey, on what principle do you compute your compensation?—I am not aware of any such case; but I rather think the company would be advised, and that they would consider, that the public utility must prevail, and that they should pay nothing for any loss of beauty, or anything else. If a company went through the grounds of the proprietor to whom the abbey belonged, or if they went so near the ruin as to prevent the erection of a house on the same spot, if that was contemplated, if the course of the line would touch his pocket injuriously, we should have to pay for that; but I think that, for the mere destruction of an object of beauty or interest, we should not have to pay anything. If a party went before a jury, and there was any claim set up of that kind, we should fight it very resolutely.

On the ground that the party was entitled to no compensation for injury to a ruin?—Yes; that it should be no injury to his pocket, and, therefore, he had nothing to receive.

However hallowed the ruin might be in his estimation?—That is so. He must come to Parliament, and pray of Parliament not to grant a bill for a railway to run near so beloved a place. But if it was a beautiful spot, he should get a station made near it, and turn it into building land.

Mr. John Clutton, land agent of the South-Eastern Railway Company, examined:—

Can you give any information respecting the price which has been paid for the land taken, including the price of the land, compensation for severance, and other damages?—Each case had depended upon its own merits entirely; I think the total sum is 600,000*l*.

For how many miles of railway is that?—They have on the whole about 120 miles, including works in course of construction.

That is, upon the average, 6000*l*. a mile?—Yes.

Does that include a great deal of house property?—It includes the Bricklayers' Arms branch and the Dover terminus. I think those are the largest portions of house property taken by the Dover Railway. The London terminus is the joint terminus of the three companies, the Dover, the Croydon, and the Brighton.

Then 6000*l*. a mile would be considerably larger than what may be considered as having been paid for land?—Yes; I should state that about 3000*l*. a mile would be the average upon the Dover Railway, including the branches, for land simply.

How many acres a mile?—It varies so much. On many of the branch lines it has not exceeded ten acres a mile. Upon the main line, where the works are much heavier, I suppose the quantity has been at least fourteen to fifteen acres a mile. I am merely giving opinions now; I have not gone into the figures precisely.

Can you give to the committee more detailed and accurate information?—If your lordships desire it. I am now purchasing land for the Dover Railway Company, which would cost, I suppose, about 3000*l*. a mile.

That is mere land?—Nearly so.

That comprises both the severance and compensation?—Yes; that is upon the Canterbury and Ramsgate and Margate branch. I can give accurate information as to those two branches, because they are more particularly in my recollection.

In some part of the Dover Railway is not the quantity taken less than ten acres to a mile?—I do not think we take so little as that anywhere.

Not near the coast?—In many places near the coast we have taken a great deal more than that. In all the part between Folkestone and Dover I should think it would be double that amount, because the cuttings and embankments are very heavy indeed there.

What is the usual width you can be content with?—I never saw it taken at less than a chain wide, and that would give eight acres to a mile: that we always take without cuttings or embankments.

How many years' purchase are given?—I have universally given, since the funds have been at their present price, thirty-three years' purchase to begin with.

How many years' purchase for severance?—That must depend upon the amount of damage done.

How many years' purchase have you ever given for severance?—Many hundred per cent. in some cases. I will mention a case, in which twenty-five acres of land were valued at 2,500*l.*, and the amount given was upwards of 10,000*l.* That would be 400*l.* per cent. upon the value of the land for severance and consequential damage.

In the ordinary case of *going through a farm*, where you cut a field in half, and pay 100*l.* an acre for thirty-three years' purchase for the land, what would you expect to pay for the severance for dividing the field, besides the purchase of the land?—I do not think any general rule can be laid down; *it depends upon the situation with reference to the homestead, and with reference to roads.*

And with reference to water?—I think there are clauses in every railway act I have seen, that the company shall provide an equal quantity of water to be cut off. We do not generally take that into our estimate; we generally provide it.

In some cases is not that almost impossible?—Then we pay for the loss; because, whether it is one acre or 100 cut off, of course the amount of damage done must depend upon that. In estimating for lines of railway, when I give evidence before Parliament, I always estimate twenty-five per cent. for a forced sale, and fifty per cent. for severance, putting in the first instance a high value.

Putting in the first instance thirty-three years' purchase, then twenty-five per cent. for forced sale, and fifty per cent. for severance?—Yes. In some instances the severance will be 100 or 200 per cent., in other cases nothing; depending entirely upon the circumstances of each case.

In that case where 10,000*l.* was given, was that given to ward off opposition, or on account of the detriment that was done to the place?—The amount of the injury was determined by reference, and I presume the referees took into their consideration the damage done to the estate.

You attribute it, then, to the detriment that was done to the place, and not to the object of warding off the opposition of the individual?—Perhaps I should make myself better understood by giving this explanation. The case was mentioned of my Lord A.; I think I had better adhere to that case. The agreement was entered into prior to the passing of the act, the company undertaking to pay all the costs. It was referred to two arbitrators and an umpire, a barrister; they heard evidence upon the case, and gave their award of 11,000*l.* I think I can state that the value of the land was about 100*l.* an acre; that would amount to about 2,800*l.* The difference was made up of damage to the estate generally, and to the mansion more particularly; that would be about 8,200*l.*

How near did the railway pass to the mansion?—I think it was a third of a mile. There was a turnpike road between the railway and the mansion.

Can you form any judgment what proportion in general the amount given for damage and severance bears to the value of the land?—In the estimate for the construction of a railway I estimate fifty per cent. upon the cost of the land for severance and damage, except in some extraordinary cases, and then I always put on an amount beyond that, depending upon the injury done.

You say that you never take less than twenty-two yards; what is the absolute width used for the two lines of rail?—Four feet eight and a half is the gauge of the

Dover line; and you require about five feet between the two lines of a railway, and about half that width on each side of the railway simply for ballasting, making about twenty feet for the mere ballasting and the rails.

Supposing it is upon a level, do you still require that space on each side?—We make a small bank on each side, besides a ditch. The companies generally suffer great inconvenience, when the railway is not wide enough for the workmen to work during the passing of the trains.

In cutting through hills what width do you take?—It depends upon the depth of the cutting, and upon the angle at which the side will stand.

The question refers to the railway line itself?—We take the same width for the railway line, and add to that the width of the embankment or the cutting.

You said that thirty-three years' purchase was what you generally offered on the part of the company. What is the ordinary selling price of land in Kent?—I should say that in the Weald of Kent the ordinary price, before the construction of the railway, was five or six and twenty years' purchase. I think I stated that thirty-three years' purchase was only since the high price of the funds. The formation of the railway has increased the price of land in the Weald of Kent about two years' purchase.

What is the average rent?—I should say 1*l*.; I am speaking of the Weald of Kent. Before the funds were at their present price, the amount offered by the company was thirty years' purchase for the value of the land; seven and a half years for compulsory sale, and fifteen for severance; making fifty-two. Since the funds have been at 100, we have paid thirty-three years' purchase for the land, eight and a quarter years' purchase for compulsory sale, and sixteen and a half for severance.

Do you know of any instance of a residence being injured, the owner of which had no property on the line?—I think it depends entirely upon the class of residence.

Do you know of any instance where the owner has complained that his residence has been injured, having no property on the line?—I think I have known instances of gentlemen's residences, where a complaint has been made of injury; but I do not think they were injured after the formation of the railway. During the construction there is no doubt they were injured to some extent.

In those cases did you consider yourselves bound to take into consideration their complaints and claims?—Not at all; that would open so wide a field, that it would be impossible for any company to construct their works if that field were opened.

In the case of the Brighton Railway, they did give large sums of money for the right to make tunnels through the hills?—Yes; in two cases they took other land, as well as the right to tunnel under.

Supposing a railway cuts through a hill for the length of a mile: upon what principle would you value the loss to the proprietor of the land?—I think I should value it as any other land taken.

The tunnel does not hurt the land above?—I never saw any case, except at Primrose hill (where the soil was all carried away), where it did not do material damage to the land above; nearly the whole material of the tunnel goes to the top.

Suppose a tunnel under a town?—Then the material must be all carried away. I was speaking of agricultural land.

Have there been many cases to your knowledge of a tunnel under a town?—Yes.

How have the householders been compensated in that case?—In the case to which I have just referred they are now constructing the tunnel without an act of Parliament. We were obliged to purchase the right to pass under the houses, simply because the soil belonged to the owners. We paid very small sums for it. We paid each man, I think, 40*l*.; and in the case of parties having larger houses, of course, they were paid somewhat more.

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How deep below the level is it?—Sixty feet.

How were those houses supplied with water?—They have all wells.

Are you below the level?—We are below the level. We have entered into a covenant with each of the parties to supply the same quantity that they had before, if they required it.

With respect to the standing orders, is there not now a sort of understanding between railway companies, that it is not professional to oppose each other upon the standing orders?—I think it is understood that where bills are not opposed they are sure to get through the standing orders; and when they are opposed there are great doubts about it; probably one being quite as accurate as the other.

Is it not the understanding that a railway company A. opposing the branch of railway company B. would not think it professional to oppose it on the standing orders?—I was not aware that there was any implied understanding of that sort.

Is it not the fact that there is scarcely a railway bill of any length that ever has complied, or ever will comply, strictly with the standing orders?—It is quite impossible. I am acting now under one which passed in the last session of parliament, and I should think there are at least one-fifth of the fields put down to wrong names; and that passed simply because no one opposed it. Now, there are other bills which I know have been thrown out, which had not one quarter of the objections which were to that bill.

Do you think it necessary always to enter strictly into the title of the land you take?—That is not my department; I am not the solicitor. The only answer that I can give is, that railway companies do not require a selling title; they simply require a holding title, not a market title.

Do you know whether the railway companies pay the expense of all that?—Entirely, in all the arrangements that I have had to do with.

Supposing a house had cost 10,000*l.*, and had been finished last year, and that your railway came through it, what compensation would you give the owner of that house; would you give him the amount of money that he had so expended?—Yes; and something more.

You would not take the house and give him thirty years' purchase upon 200*l.*, which might be the rent he might get for it, but you would take into consideration the amount of money which he had just laid out upon it?—I think you must as nearly as possible place the man in the same position as he was in before the railway came. I think no railway company should inflict a hardship upon a private individual if they can ascertain the facts.

Would you not also allow something for the annoyance of being removed?—Yes; if he had the year before expended 10,000*l.* for his own comfort, and the company come and take that property away, I should say he should have something beyond the 10,000*l.* for his removal.

31 May, 1845.—*The EARL FITZWILLIAM in the Chair.*

Mr. Edward Driver, surveyor, examined:—

Can you give the committee any general information respecting the rates at which land has been purchased by railways, distinguishing the price of the land from the severance and damages?—I think I am in a situation to give your lordships information upon the Great Western line, in which I was concerned, having purchased about the first sixty miles from London, and the portion of it from London to Maidenhead. I gave evidence upon that before Parliament, and subsequently treated, and purchased the same, and kept an account of the result; and I can give that information. The quantity of land was 190 acres from London to Maidenhead. My estimate and evidence before Parliament upon the average was

208*l.* an acre, including every description of expense. I found afterwards, by taking out the figures, that it came to the following result:—that 117*l.* an acre was the cost for the land only; but, including the severance, it was 194*l.* an acre.

That would make the severance 77*l.*?—Yes; and the tenant's interest was 15*l.* That produced an average of 209*l.* an acre for the land and severance and tenant's interest, my evidence having stated before Parliament an average of about 208*l.*, so that I was within 1*l.* an acre of my first estimate, showing that I had formed a tolerably correct estimate. Upon general principle, my mode is this:—to charge the land first at the full rent; if it is worth 35*s.* an acre I should call it 40*s.* an acre. I then put it at thirty-three years' purchase. I add a fourth to that for compulsory sale, making forty-one years and a half. Then I find a moiety more must be added, making sixteen years and a half purchase more, to cover severance, which makes fifty-eight years' purchase; and I have generally said that it comes to sixty years' purchase to cover everything.

Have you ever been employed as an arbitrator?—Yes, in several cases.

Have you found that your colleagues have thought that this was a right principle?—I have found that they may have asked more; but they have always been satisfied when the verdict has been to this amount.

Have the gentlemen that you have met with in that way admitted the principles that you have just stated?—Quite so.

This was at the commencement of the Great Western Railway?—Yes.

There was more opposition then to the sale of land for railway purposes than there is now?—We wanted to pay the full fair price for everything. We had only two juries in the whole of the distance between London and Maidenhead, and those were both very different cases; they were market gardens, where the profits were very enormous. The grower or occupier showed the produce of pears and apples, and what they could get for them in Covent-garden market.

Would you not say that that is rather valuable land upon the greatest part of the line to Maidenhead?—It is more valuable than upon the Brighton line; but I valued upon the Brighton line also. I am quite satisfied that this mode of calculation would ensure full justice to the landowners, without introducing any fancy value or extravagant demands.

You do not take into consideration that the property of the individual is most likely benefited by the railway?—I think not.

It is, no doubt, your opinion that landed property is generally very much improved in value by having a railway run through it?—I think it is; I think it has equalized the value of land very much.

In letting land for building purposes upon large estates, the ground rents fixed have some reference to what are expected to be the profits of the builders?—In that case the locality is the inducement to the person to take the land, and therefore it does affect the value; but that is a sort of private agreement between parties.

Does not the railway stand very much in reference to the land upon which it is placed in the same relation that houses do to the land upon which they are built?—As far as residences go, I think it does.

Supposing that a railway was to go through a gentleman's residence that had just been finished at the expense of 10,000*l.*, how should you value what he ought to have; should you do it by reference to that cost of 10,000*l.*, or upon what principle?—If I felt that the railway had prejudiced him, either as to letting or as to sale, I should exercise my judgment in considering what would be the amount of the depreciation on this account.

Suppose it goes through the house and destroys it?—I should pay him the full cost of the building.

And the value of the land it stood upon?—Yes; and compensation for any inconvenience he sustained besides, or disappointment.

In the case of taking a gentleman's residence in that way, would you be guided by the amount of money he had just expended, or would you be guided by the rent which you might think that gentleman might get for the house if he let it?—I think I should be guided by the money he had spent, thinking that the railway company ought to pay for the whole amount of the loss he had suffered. I believe that has always been the case.

You do not consider the letting value of the place to be the real criterion of its value to the owner?—Certainly not; and particularly with reference to a residence.

You do not consider that any large country house lets for anything like the money which it has cost to erect it?—Certainly not. Gentlemen are always desirous of letting their houses, if they can get a good tenant, at a very moderate rent, in order to ensure the house being kept warm. I have houses which I should be glad to let upon those terms. A house, if untenanted during the winter, suffers most materially.

It may frequently happen that a landed proprietor of considerable fortune may, from temporary circumstances, wish to let a residence for two, three, or five, or a short term of years, in which case the rent he gets is no criterion of the value of the property?—Certainly not. I should think the rent would hardly be the interest of the value of the materials to be sold, it is of so little consequence.

What was the average money that the land between Shoreham and Chichester cost?—I have not the means of telling the average very accurately; but I should think it will amount to an average of 220*l.* and 230*l.* an acre.

It goes through parts of the best land in the county of Sussex?—It goes through very fine agricultural land.

Do you think that the circumstances which guided you in coming to fifty-eight years' purchase would equally guide you now if you had to do it again?—Precisely. I have gone upon the same principle in valuing from Brighton to Chichester.

In that distance to Maidenhead, can you state what was the lowest value of any particular lands, and what was the highest value of any particular lands?—In that district there was some very good land; perhaps the average would be about 50*s.* an acre as the rental for agricultural purposes, and I do not think any was under 30*s.*

Would you think it advisable that a minimum number of years' purchase should be laid down below which no land should be taken by a railway company?—I think fifty-eight years' purchase would be a very full price to fix as a minimum.

There are many cases in which there is no payment required for severance?—There are some cases, certainly.

In those cases would it be fair to put fifty-eight years' purchase as the price?—No, I do not think it would; nor do I think it possible to make any general rule applicable to every case. If you take the corner or a portion of a field, it may do not a shilling damage beyond the extent of land taken.

You do not think a minimum price necessary for the protection of the small landed proprietors?—I am quite sure there is no occasion for it. Railway companies are always anxious to pay liberally for everything they take.

Besides, does not your view of the compensation which ought to be given, depend very much upon the shape of the ground, whether the railway passes it upon a level, or upon an embankment, or in a cutting?—I do not think that affects it much, because if it is upon an embankment they must provide communications, and if it is upon a level they can do no more. It more affects it when it cuts the estate or the field diagonally. Sometimes it goes in a parallel line with the boundary of the field, without doing half so much damage as in the other case.

Though the compensation for severance must be uncertain in its amount, the number of years' purchase on a full rent is a certain fixed quantity?—Yes.

So also is the addition to be made to that upon the ground of the sale being compulsory?—Yes.

Have we not, then, composed of those two items, a fixed total?—I do not see any objection to that; that would be forty-one and a half years' purchase for the first purchase of the land, independent of any compensation for the severance.

Here then we have a fixed quantity?—Yes; but I wish my observation to be understood to refer to freehold land.

You spoke of forty-one and a half years' purchase as being upon a full rent; do you think it would come to something like forty-five upon the actual rent paid?—I think not.

Take the case of an acre of larch plantation, twenty years old, of thriving trees; how would you value that?—That would be a special case, and it would require particular consideration. The value of that must be the timber.

The timber may be worth not above 100*l.* an acre, yet in fifty years more it might be worth 1000*l.*?—This is just one of those cases in which I do not think it possible to provide a general rule.

But in that case it would be the price to be paid for the timber, and that price would depend upon the probable increasing value of the timber?—A plantation of firs is a very uncertain thing, certainly.

It is in the nature of a reversionary interest?—Yes; and has a great deal to do with the fluctuation of price.

In a private agreement between an owner of land and a builder, who is about to speculate upon it, the ground rent will to a great degree vary according to the expectation that the builder may have of more or of less profit. Does not the same principle apply to any other work which may be taken upon the speculation of private individuals, whether they be simply individuals, or united together in the form of a company?—I think in railway companies there is no analogy whatever with building speculations, or with turnpike roads or other public improvements, because railway companies are so organized that the public cannot derive any advantage from them or from their contiguity, except where there are stations; therefore you can make no advantage of railways as you would of turnpike roads going through estates.

Then, if that be the case, that nobody can avail himself of the advantage of a railway except at particular points, does it not follow from that, that the landowner whose property is taken for such speculations has a greater claim to consideration on the ground of the large profits to be made by those speculators, than if those profits are likely to be small?—I may observe that the mode of computing for railways at fifty-eight years' purchase applies, because in the case of a railway there is no collateral advantage to be derived from it; whereas if it was a turnpike road going through the same estate, I should never consent to pay fifty-eight years' purchase for it, because I should say the advantage to the owner from the formation of the turnpike road would be such that he ought to give the land without any price; at least in some cases such a course might be deemed advisable.

Then you do not consider that the traversing of an agricultural estate by a railway, unless it happens to be in the immediate neighbourhood of a station, is advantageous to the land?—No, I do not think it is.

Then does not that form an argument in favour of the price to be paid to the landowner whose land is to be sacrificed, varying, to a certain degree, according to the profits which it is expected that the railway company may make?—I do not know that I have the means to answer that question, from having formed no opinion upon

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that subject. It does not appear to me that there ought to be any extra price given on that account, certainly.

Do you know any case where a person's residence has been injured, and the owner of that residence, not having any property actually on the line, has been compensated for the injury to his residence?—None; that principle has never been admitted at all.

Have you known any instances where considerable injury has been done in that way?—I do not think I have known any.

Mr. *John Cramp*, land valuer, Margate, Kent, examined:—

In cases where there are none of those peculiarities to which you have previously alluded in the situation of land, how have you proceeded in your valuations of the land where there has been a difference of opinion between the landowner and the company?—It has depended upon *how the line passed through the estate*, whether upon its margin, *whether through its centre*, or whether by separating a very large portion from the homestead, making the inconvenience of the portion severed either very great or very small. This has been the system upon which I have acted relative to compensation for damage and the value of the land. I have generally taken three points to fix myself to. The first is the fair value of the land in the neighbourhood, upon which I have usually put fifty per cent. in consideration of a compulsory sale.

Fifty per cent. in addition to the full value of the land?—In addition to what I should call the marketable value of the land.

What do you mean by the "fair value," in reference to the number of years' purchase?—That would be, taking the rental and giving it thirty years' purchase.

You mean the full rental?—The full rental.

Making the whole forty-five years?—Yes; supposing that the value of the land was 40s. per acre, of course I should call it worth 90l.

Are you able to strike an average of the amount of the severance?—The severance is exceedingly various, according to whether the line runs parallel or diagonally or across the estate, cutting the enclosures diagonally, and leaving triangular pieces on each side. I have then gone into calculations relative to the increased labour that must necessarily arise afterwards by the turn of the plough, and all the labour required in working the land that is thus severed. That I have arrived at by going practically into the cultivation. I find that the plough, by being obstructed in the turning, will lose forty yards in its straight direction every time; then, of course, in the same furrow on the other side there will be the same obstruction again; and that, upon a certain quantity of land for a certain length of railway, will amount to so much labour being lost in the ploughing, which ploughing I have given a certain value to, and upon that I have calculated thirty years' purchase. That is what I should call the damage arising to the future cultivation of the land by the increased labour and expense. The next point would be afterwards, when I was satisfied with respect to the value of the land, and the damage done by severance: I then take a general view of the estate, to see what its deterioration is by having that severance, and by having that obstruction across the farm. In some cases it is much; in other cases it is less, and upon that, having no tangible point whereon to calculate, it has been an operation of the judgment altogether, what I would give for it without the line, and what less I would give for it with the line. Those are three points that I generally fix myself to; and in doing so I have sometimes had some very strong battles to fight. Where the parties have left it to me I have generally succeeded; but usually the proprietor, as he advances towards a jury,

begins to be a little nervous, and his solicitor has in several cases advised him by all means to compromise rather than go to a jury; for the decision of a jury is so uncertain, and often so contrary perhaps to sound evidence, that it deters many from going before a jury; and in several cases I am quite satisfied that many hundreds of pounds have been taken less than ought fairly to have been given for the property.

Upon any given length of railway, say five or ten miles, without going into the particulars, what do you think the compensation for severance has been per mile, upon the average?—A mile will take in a great variety of severances, because it will pass through three or four estates in a mile. I should say that the compensation for severance for land taken by the railway has been from 50*l.* per acre to 150*l.*

Should you put the average at 100*l.*?—No; not so much. I think the greater number have been confined to 50*l.* or 70*l.*; sometimes, where it has been very great, it has gone as far as 100*l.* or 150*l.*

Do you know many cases the other way, where individuals have been deprived of their land and have been forced to accept a certain amount of remuneration, and have then felt it, and have afterwards continued to feel it, a grievance?—Yes; on one farm in particular that happened, between Ashford and Folkestone. That was one of the cases in which I was engaged. The parties there, I believe, took about seven acres and a half of land, for which they paid 1,250*l.* The intrinsic marketable value of the land was somewhere about 60*l.* or 70*l.* an acre. This was also a compromise between the proprietor and the railway company, for my estimate went far beyond that. Since that, the occupier, who had a twenty-one years' lease at the time, has told me that if he could get rid of the railway he would willingly pay 100*l.* a year; that he found it a nuisance and interruption to the usual course of his operations in agriculture and grazing, because it went through both; and that he would willingly give 100*l.* a year more to be rid of the railway.

Do you consider that the noise, and other circumstances connected with the working of the railway, are injurious to the grazing of cattle in the fields?—No. I do not think there is much in that argument, unless it is horses or fresh cattle put upon the land; for a little while they are alarmed, but they soon become reconciled to it. I meant that it was inconvenient in shifting stock; for this railway went through the centre of the estate. He had grazing land on either side of it. He was confined to one communication, which was the bridge, through which he was obliged to drive his stock, and they became mixed; and he was obliged to have two or three people, where he had only one to open the gate before. Again, the arable land was cut off from the homestead, and his horses were often alarmed at the noise of the engines passing when they had just got upon the bridge, or near it; for he was obliged to pass this bridge to cultivate every acre of land upon his farm. In point of fact it is almost impossible to foresee all the inconvenience and all the damage that will be sustained, and that is the difficulty we have in arriving at the positive value that should be paid for compensation.

In this case was the bridge over or under the railway?—Over.

Do you really think that he sustained a loss or injury to the extent of 100*l.* a year?—I should say that you could not find it to be 100*l.* a year, by merely calculating the inconveniences, unless, perhaps, he kept a diary. If every day that he sent out three men instead of one, he had put it down, then at the year's end he would arrive at something like a tangible point on which to rest his damage; but he speaks in a general way, "I find so many inconveniences that I would willingly give 100*l.* a year for the railway to be taken away."

*Report,
and Evidence on
Compensation.*

2nd June, 1845.—*The EARL FITZWILLIAM in the Chair.*

Mr. John Swift, of Liverpool, Solicitor of the Grand Junction Railway Company, examined:—

Have you any knowledge of the terms on which the land generally has been purchased for the Grand Junction Railway Company?—I superintended the purchase of a considerable portion of it.

Can you state the total price that was paid for the land on the line?—I think altogether about 120,000*l.* for seventy-eight miles. That included station land at Birmingham.

Does that include the compensation for severance and damage, or merely land?—The whole.

What number of acres were taken?—About 800 acres, I should say, from recollection.

Could you, on any given length of ten or fifteen miles, where there were no remarkable circumstances either to make the price higher or lower, state what was the price?—I do not think there was any great difference between any districts, except of course where we approach a town. I do not know what the average may have been; perhaps 100*l.* an acre.

In a purely agricultural country it is about 100*l.* an acre?—Yes.

Have you any knowledge what, on an average, would have been the rent of that land?—I should think not 30*s.* an acre.

A good deal of it is very poor land, is it not?—Yes.

You think the average could be put as high as 30*s.* an acre?—I can only state that I think it would be to that amount.

You think it would be more than 25*s.* an acre in farming land, on the average, except of course near Liverpool?—We do not go near Liverpool; we begin at Warrington, and thence have only two miles in Lancashire, which is meadow land, and that lets for 4*l.* or 5*l.* an acre.

What did you pay for that land?—300*l.*, I think.

Including everything?—Yes; excluding, of course, communications.

Are you able to state the number of years' purchase upon the average that was given for the land between Newton and Birmingham?—No. If the rental was 30*s.* and the price 100*l.* per acre, it would be sixty-six years' purchase.

When you proposed compensation, did you take the letting value of the land, then the inconvenience in consequence of cutting diagonally through a field, and the inconvenience in ploughing, so much per cent. on the original letting, and then also for the additional severance so much per cent.? Do you assess it upon that calculation, or upon the gross estimate?—We had a valuation of that sort made, based on what the letting value was.

And then how much for severance?—If the landowner had not asked us more than double the value of the land we should have paid it without inquiry; if he asked six times as much, we should not; in the latter case we should have inquired into the two questions of land and of damage separately.

What has been your offer for land; more than thirty years' purchase?—Yes. If we had been called on to make an offer with the prospect of going to a jury, we should, for our own protection, have offered a price far beyond what they could have got from anybody.

You stated that you supposed it was about sixty-six years' purchase at the time you made those arrangements; what sort of arrangement would you have to make now; would it be more or less, do you think?—I have had occasion lately, as acting for the Lancaster and Carlisle Railway Company, to know what has been doing

generally, and I should say that there they paid more years' purchase. There we have only had one jury case hitherto, and the jury gave less than the sum offered.

Has your valuer given you the value of the land itself, first, not taking into consideration the severance, but merely the value of the land?—He gives a statement of what he has ascertained to be the rent, and upon that he first assumes a certain number of years' purchase.

What is the number of years' purchase upon that?—I have stated the cases of which I was cognizant on the Grand Junction Railway; I could not reduce them respectively into years' purchase, taken generally.

That was not the average, I suppose?—Yes, including severance.

Without including severance?—Our surveyor always begins with thirty years' purchase or thirty-five years' purchase, and all the rest is damage. They put on a sum for what they call compulsory sale; five years' purchase, frequently.

Supposing there was a strip like that which is occupied by that which belongs to the railway company, running through the lands of these various proprietors, have you any doubt they would readily pay quite as large a number of years' purchase in order to secure that line as they have obtained from you?—Not always; but I think they would very often, or generally. If I had an estate I would not willingly have a piece taken out of the middle of it if I could prevent it.

You stated, as I understand you, that it was about thirty-three years' purchase that they got for the value of the land?—Yes; that is the beginning of the calculation, to ascertain what the landowner is ultimately to be paid.

As to the value of the land itself, without severance?—Yes, it would not matter how you work out the process.

You would decompose the demand of the landed proprietor, and see how much was the rental value, and how much you could afford to pay for severance?—If it were an unreasonable sum that he asked in gross, we should object, but not otherwise.

Do you think landowners could be put in a better position than they are by the bill that passed this session—the Lands Clauses Consolidating Bill?—I do not; because I think, with the option of a special jury on the one hand, or arbitration on the other, they really have, as it appears to me, every sort of protection you can conceive; and, generally speaking, I think that the reasonable prejudice of the jury is in favour of the landowners.

CHAPTER VI.

ON THE MODE OF ASSESSING COMPENSATION.

I. <i>By Justices of the Peace</i> . . . 278	III. <i>By Arbitration</i> 283
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1. *Compensation assessed by Justices of the Peace.*

Compensation assessed by two justices.

8 & 9 Vict. c. 18, s. 22, App. 49.

8 & 9 Vict. c. 20, s. 6, App. 75.

Sect. 30.

Sect. 43.

8 & 9 Vict. c. 18, s. 121, App. 67.

BY the Lands Clauses Consolidation Act it is enacted, that if no agreement be come to between the company and the owners of, or parties enabled to sell and convey or release, any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands, or of any interest therein, or as to the compensation to be made in respect thereof (*a*), and if in any such case the compensation claimed *shall not exceed 50l.*, the same shall be settled by two justices (*b*). So, with respect to the construction of the railway and works, if any lands are taken or used or injuriously affected, the Railways Clauses Consolidation Act enacts, that if the sum in dispute does not exceed 50*l.*, the compensation is in like manner to be settled by two justices (*c*). And if the company enter upon any private road, and no agreement be made as to the amount of compensation which the owners and other persons interested in the road are to receive, the difference must be settled by two justices. Two justices may also, in certain cases, affix the amount of rent to be paid for the temporary use of lands.

So, where lands required to be taken by the company are in the possession of any person having no greater interest than as a tenant for a year, or from year to year (*d*), and such person is required to *deliver up the lands* before the expiration of their term, two justices are authorized by the Lands Clauses Act to assess the amount of compensation (*e*).

(*a*) The preliminary steps to be taken have been already considered, ante, 180.

(*b*) See also 8 & 9 Vict. c. 18, s. 68, post, App. 55.

(*c*) See 8 & 9 Vict. c. 20, s. 6, post, App. 75; *ibid.* s. 16, post, App. 78. *Ibid.* s. 44, post, App. 83, taken in connection with 8 & 9 Vict. c. 18, s. 22, *supra*.

(*d*) The schoolmaster of a free grammar-school who might be turned out by two-thirds of the governors and the bishop at

three months' notice has *no greater interest* than this; and must proceed before the justices, though he claim much more than 50*l.* compensation. *R. v. Manchester, Sheffield and Lincolnshire R. Co.*, 4 E. & B. 88. A person who produces a lease which is void at law but good in equity is not to be considered a yearly tenant. *Sweetman v. Metropolitan R. Co.*, 1 Hemm. & Mill. 543.

(*e*) Their order need not be in writing. *R. v. Coombe*, 32 L. J. (M. C.) 67.

In both the last-mentioned cases, the jurisdiction of the justices seems to attach, although the amount of compensation in dispute may exceed 50*l*.

*Compensation
assessed by Two
Justices.*

Where, therefore, lands in the possession of a person having no greater interest than as tenant for a year, or from year to year, are taken by a railway company, the tenant *must* proceed to obtain compensation before justices and cannot proceed under sect. 68 (*f*).

It has, however, been held that where *possession* of the lands is not required by the company, a tenant from year to year who is "injuriously affected" cannot proceed under sect. 121, but must proceed under sect. 68 (*g*). To obviate the inconvenience and expense attendant upon such proceedings in the case of tenants from year to year of small houses in the neighbourhood of London, the Metropolitan R. Co. procured the insertion in their act of 1863 of the clause to which we have already adverted (*h*), and which was incorporated in their acts of 1864 (*i*), under which *all* claims for compensation, under the acts relating to the Metropolitan Railway by persons who have no greater interest than as tenant for a year, or from year to year, *must* be made in manner provided by sect. 121. And there are similar provisions in many other Railway Acts passed in 1864 (*k*). If, in a case under sect. 121, the company agree to refer a claim to arbitration, and join in appointing an arbitrator, they cannot afterwards object that the claimant ought to have proceeded before justices under sect. 121 (*l*).

*In cases within
the Metropolis.*

*Agreement to
refer claim within
sect. 121.*

Two justices are also empowered to apportion the amount of rents payable in respect of copyhold lands, when only part of the lands are required to be taken for the purposes of the Railway: (8 & 9 Vict. c. 18, s. 98, post, App. 63.) And they may, under the like circumstances, apportion the amount of rent-charges, &c.: (Sect. 116.)

*Apportionment of
rents.
Copyholds.*

Rent-charges.

So, if lands are comprised in a lease for years unexpired, and a part only of such lands are required by the company, the rent of the remaining portion of the land is to be apportioned by agreement, or by two justices; and, after such apportionment, the lessee is liable only for the rent apportioned: (Sect. 119.) Two justices are also

Leaseholds.

*Value of lands
omitted to be
purchased.*

(*f*) *R. v. Manchester, Sheffield and Lincolnshire R. Co.*, ubi supra; *Knapp v. London, Chatham and Dover R. Co.*, 32 L. J. (Exch.) 236; 2 H. & C. 212.

(*g*) *Somers v. Metropolitan R. Co.*, 31 L. J. (Q. B.) 261.

(*h*) Ante, 251.

(*i*) 27 & 28 Vict. c. ccxci. s. 13, c. ccxv. s. 14.

(*k*) See "The North London Railway (Additional Powers) Act, 1864," 27 & 28 Vict. c. ccxvi. s. 23, as to claims under

that act, or any acts relating to that company which has incorporated "The Lands and Railways Clauses Acts, 1845," or either of them; "The Great Eastern Railway (Metropolitan Station and Railways) Act, 1864," 27 & 28 Vict. c. ccxiii. s. 3, "The Metropolitan District Railways Act, 1864," 27 & 28 Vict. c. ccxxii. s. 82.

(*l*) *Collins v. South Staffordshire R. Co.*, 7 Exch. 5; *R. v. Manchester, &c. R. Co.*, ubi supra, note (*d*).

*Compensation
assessed by Two
Justices.*

*Qualifications of
justices.*

*Mode of pro-
ceeding.*

8 & 9 Vict. c. 18,
s. 24, App. 49.

*What damages to
be considered.*

empowered to assess compensation under 50*l.* for lands omitted to be purchased by mistake: (Sects. 124, 125, 126.)

In order to give the justices jurisdiction, they must be acting justices for the county or city, &c. where the matter requiring their cognizance arises, and *not be interested* (*n*) in the matter; and if the question arises in respect of lands situate not wholly in any one county or city, &c., justices for the county or city, &c. where any part of the lands are situate may act; and, in all cases, the two justices must be assembled and acting together (*o*): (Sect. 3.)

The following is the mode of proceeding directed in all cases of disputed compensation authorized to be settled by two justices:—

By sect. 24, “it shall be lawful for any justice, upon the application of either party, with respect to any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized to be settled by two justices (*p*), to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

It is conceived, that the justices cannot, any more than a jury (*q*), inquire into the claimant’s *right* to compensation; they are merely to award the *amount*, and leave the question of right to be decided when proceedings are taken to enforce their award.

The justices, in estimating the purchase-money or compensation, are required to regard, not only the value of the land to be purchased, but also the damage, if any, which may be sustained by reason of the severing of the lands taken from other lands of the owner:

(*n*) A justice who is a shareholder cannot act. *R. v. Hammond*, 9 L. T. (N. S.) 423, and see further, post, 302.

(*o*) Also 8 & 9 Vict. c. 20, s. 3, post, App. 74.

(*p*) It will be observed that this section applies only to questions of *disputed compensation*. Some of the cases above enumerated, over which justices have jurisdiction—for instance, those relating to the apportionment of rents—do not seem to be cases of disputed compensation, within the meaning of the section. But if this be so, the 8 & 9 Vict. c. 20, s. 142, seems to apply. By that section, “where in this act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful

for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties, or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.”

(*q*) See on this point, post, 303.

(Sect. 63)(*r*). And where the time for executing the works has been extended by the Board of Trade, they must also take into consideration any additional damage caused by such extension of time (*s*).

Compensation assessed by Two Justices.

The proper mode of enforcing payment of money awarded by justices, for compensation under the above powers, is by obtaining an order from the justices for the payment of the money, which may be enforced by a distress (*t*). The decision of the justices is conclusive, provided the matter determined be within their jurisdiction. But although the certiorari is taken away (*u*), an order may be brought up to be quashed, if the justices had no jurisdiction to make it (*x*). It has been decided (*y*), that the statute 11 & 12 Vict. c. 43 (*z*), applies to orders made by justices for the payment of compensation, under the Consolidation Acts. It is, therefore, necessary to observe, that by sect. 11 of that statute, "in all cases where no time is already or shall hereafter be specially limited for making any complaint or laying any information in the act or acts of Parliament relating to each particular case, such complaint shall be made, and such information shall be laid, within six calendar months from the time when the matter of such complaint or information respectively arose" (*a*).

The mode of enforcing payment is by obtaining an order.

Order may be quashed if made without jurisdiction.

Claims must be made within six months, under 11 & 12 Vict. c. 43.

In the case above referred to, an order for compensation was made by justices in 1850, in respect of damage done by the execution of railway works in 1847, and the order, being brought up by certiorari, was quashed for the reason before mentioned. It follows, therefore, that in all cases claims for compensation in respect of damages done to lands must be made before the justices, within six calendar months from the time when the injury is sustained.

Two justices are also authorized to determine differences as to the kind or number of accommodation works, and the repairing thereof (*b*), and as to deviations (*c*); also to hear objections to the taking of lands (*d*), and to appoint surveyors in certain cases (*e*); but their

Differences as to accommodation works, &c.

(*r*) But it seems sufficient, unless otherwise required by the parties, to assess one entire sum. See *Bradshaw's Arbitration*, 12 Q. B. 562; 17 L. J. (Q. B.) 362, post.

(*s*) 11 & 12 Vict. c. 3, s. 7, post, App.; 26 & 27 Vict. c. 92, s. 20, post, App.

(*t*) See 8 & 9 Vict. c. 20, ss. 6—16, 44, and 140, post, App.

(*u*) 8 & 9 Vict. c. 18, s. 145, post, App. 71; 8 & 9 Vict. c. 20, s. 156, post, App.

(*x*) See this subject discussed, post. If it is intended to remove the order by certiorari a recognizance must be entered into pursuant to 5 Geo. 2, c. 19, s. 2, and the application for a certiorari must be made within six calendar months next after the order is made; and six days before the application notice thereof in writing must be given to the justices by and before whom the order was made, pursuant to 13 Geo. 2, c. 18, s. 5, to the end that such justices or

the parties therein concerned may show cause if they think fit against the issuing such certiorari.

(*y*) *Re Edmundson*, 17 Q. B. 67; *R. v. Leeds and Bradford R. Co.*, 21 L. J. (M. C.) 192; 18 Q. B. 343. The Court also decided that 11 & 12 Vict. c. 43, was retrospective in its operation. See *R. v. Coombe*, 32 L. J. (M. C.) 67.

(*z*) An act relating to summary convictions, and orders made by justices of the peace out of sessions.

(*a*) See *Labalmondiere v. Addison*, 28 L. J. (M. C.) 25.

(*b*) 8 & 9 Vict. c. 20, ss. 62, 69, post, App. 87, 88.

(*c*) *Id.* s. 11, post, App. 76.

(*d*) *Id.* s. 36, post, App. 82.

(*e*) 8 & 9 Vict. c. 18, s. 9, post, App. 47; *id.* s. 85, post, App. 60.

*Compensation
assessed by Two
Justices.*

powers in these and similar matters do not properly belong to the subject-matter now under consideration.

II.—*Compensation assessed by Surveyors.*

Cases where compensation may be assessed by surveyors.

8 & 9 Vict. c. 18,
s. 47, App. 53.

Compensation may be assessed by surveyors in the following cases:—If a party, who has received due notice, fails to appear at the inquiry held before the jury; or if, by reason of absence from the kingdom, he be prevented from treating, or if any party cannot, after diligent inquiry, be found (Sect. 58), then two justices are required to nominate an able practical surveyor (*f*), to determine the purchase-money or compensation to be paid for any lands to be purchased or taken by the company, and the compensation for any permanent injury to such lands; and such surveyor is directed to annex to his valuation, a declaration in writing of the correctness thereof (*g*): (Sect. 59.) Every surveyor is required to make a declaration that he will act faithfully and honestly: (Sect. 60.) The nomination and declaration must be annexed to the valuation and preserved therewith, by the company, and be open to inspection: (Sect. 61.) And all the expenses incident to every such valuation must be borne by the company: (Sect. 62.) In all cases where the compensation has been thus ascertained by a surveyor, by reason that the party could not be found, or was absent from the kingdom, such party, if dissatisfied, may, before he shall have applied to the Court of Chancery for the money deposited in the Bank, require the question of compensation to be submitted to arbitration, as in other cases of disputed compensation (*h*): (Sects. 64, 65.) If a further sum be awarded, the company are required to pay, or deposit the same, and provisions are made as to the costs incident to the arbitration: (Sects. 66, 67.) And we have seen that where lands are purchased or taken from parties under disability to convey, &c., the compensation (except where it has been assessed by a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices) must be assessed by two able practical surveyors, to be appointed as directed by the act (*i*).

Surveyors, in estimating the compensation, are required to observe the rule already referred to (ante, 280), as to regarding the damages sustained by the severance of the lands taken, from other lands of the owner: (Sect. 63.)

(*f*) It seems to be improper to appoint a surveyor who has been previously engaged on behalf of the company, ante, 189, note (*s*).

(*g*) It does not seem to be necessary that the appointment should contain a descrip-

tion of the lands. *Poynder v. Great Northern R. Co.*, 5 Railw. C. 200; see the form, post, App. tit. *Forms*.

(*h*) See post, 283.

(*i*) Ante, 172. See 8 & 9 Vict. c. 18, s. 9, post, App. 47.

And, when common or waste lands are taken for the purposes of a railway act, the commoners are required to appoint a committee to negotiate with the company (*k*); but if no such committee be appointed, then two justices are required to appoint a surveyor, who is thereupon authorized to determine the amount of compensation which the commoners are entitled to receive for the extinction of their commonable rights: (Sect. 106.)

By Surveyors.

We have already stated (*l*) that under sect. 85 of the Lands Clauses Consolidation Act, a surveyor may also be appointed, in certain cases, to make a valuation of lands; but as this is a proceeding merely preliminary to the entry on the lands, it is unnecessary to refer further to this subject in this place.

III.—*By Arbitration.*

The provisions whereby parties are enabled to refer their claims for compensation, in respect of injuries done to lands, to arbitration, are contained in a few sections of the Lands Clauses Consolidation Act, and as these important clauses have been made the subject of discussion in the Courts, we proceed to transcribe them without abbreviation, and then, by adding a few remarks on the effect of the decisions, as they apply to these clauses, we propose to present a short summary of the law on this subject.

Arbitration clauses in the Lands Clauses Act.
8 & 9 Vict. c. 18.

We have already shown that, by sect. 23, any party claiming compensation, whose claim exceeds 50*l.*, has the option to have the same settled by arbitration, provided he signifies his desire to the company in due time (*m*). Sect. 23 concludes thus:—"but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if, when the matter shall have been referred to arbitration, the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided" (*n*).

If award be not made in three months, the case must go to a jury, sect. 23.

By sect. 25, when any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized or

Mode of appointing arbitrators, sect. 25.

(*k*) See 8 & 9 Vict. c. 18, s. 99, and following sections, post, App. 63.

(*l*) Ante, 189.

(*m*) See ante, 183. This applies to claims under s. 68. *Evans v. Lancashire and Yorkshire R. Co.*, 22 L. J. (Q. B.) 254; 1 E. & B. 754.

(*n*) 8 & 9 Vict. c. 18, s. 23, post, App. 49. This is merely a power given for the

advantage of the parties, enabling either party to obtain a settlement of the compensation by a jury, in case of improper delay in the arbitration, which the parties may renounce, and enlarge the time beyond three months, by consent. *Caledonian R. Co. v. Lockhart*, 3 M'Q. 811; *Palmer v. Metropolitan R. Co.*, 31 L. J. (Q. B.) 259.

By Arbitration.

Mode of appointing arbitrators.

8 & 9 Vict. c. 18, s. 25, App. 50.

required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator (*p*), to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking (*q*), under the hands of the said promoters or any two of them, or of their secretary or clerk (*r*), and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party, to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be *in dispute* (*s*), and in such case the award or determination of such single arbitrator shall be final.

Yates v. Mayor of Blackburn.

Where the amount claimed for compensation is not paid or agreed to be paid within twenty-one days, as provided by sect. 68, it is the duty of the claimant, before nominating an arbitrator on his behalf, to attempt to procure the appointment of a single arbitrator (*t*).

(*p*) If either party objects to the arbitrator appointed by the other side, on the ground that he is not an impartial person, it is not sufficient to protest against the propriety of the appointment, but it seems that it is the duty of the objecting party to retire from the arbitration. Thus, where the objection was, that a railway company had appointed as their arbitrator a surveyor who had been employed by them in the first instance, to negotiate for the purchase of the land, the value of which was in dispute, K. Bruce, V. C., said—that the surveyor ought not to have been selected, but that the claimants had waived the objection, by going on with the arbitration, although under protest. *In re Elliott*, 2 De G. & Sm. 17.

(*q*) By the corresponding clause in the Railways Clauses Act, 8 & 9 Vict. c. 20, s. 126, the appointment of an arbitrator on the part of the company may be made “under

the hand of the secretary or any two of the directors of the company.”

(*r*) Where a claimant agreed with a railway company to refer a question of compensation, and the agreement was signed on behalf of the company by their secretary, it cannot be objected that the signature of the secretary did not bind the company; because the 25th section, which authorizes the company to refer by a submission signed by the secretary, applies to all cases of arbitration, whether compulsory or otherwise. *Collins v. South Staffordshire R. Co.*, 21 L. J. (Exch.) 247; 7 Exch. 5.

(*s*) The amount to be paid in money is the one question in dispute. The arbitrator can award nothing but money, and not rights of ways or approaches. *Re Ware*, 9 Exch. 395; *Re Byles*, 11 Exch. 464; *Re Duke of Beaufort*, 29 L. J. (C. P.) 241.

(*t*) *Yates v. Mayor of Blackburn*, 29 L. J. (Exch.) 447.

It will be observed that sect. 25 requires that each party, on the request of the other party, shall "nominate and appoint" an arbitrator. It is, therefore, important to ascertain what is a valid nomination and appointment of an arbitrator, within the meaning of this and other sections in the Consolidation Acts. It seems that no such nomination and appointment can be said to be made until the appointment is actually made and delivered to the arbitrator (*u*), and notice of such nomination and appointment given to the other side. The following decision seems to afford a rule of construction on this point. By the terms of an agreement, the defendant agreed to purchase growing crops of the plaintiff, the price to be paid on the 5th of June, the valuation to be made by the 3rd of June, by two persons, one named by each party by the 31st of May; and in case either party neglected or refused to nominate a referee within the time appointed, the referee of the other party alone was to make a final decision. The defendant having neglected to appoint a valuer, the plaintiff's valuer proceeded *ex parte*, and the plaintiff sued the defendant for the money awarded. The defendant pleaded that the plaintiff did not within the time appointed, or according to the agreement, "nominate or appoint" a referee. It was decided that the word "nominate," as used in the agreement, meant not only the choice of a referee, but the communication of the appointment to the other party; and that an appointment by the plaintiff of a referee, on the 31st of May, and communication of that appointment to the defendant (who resided in another county) by letter, which reached him on the 1st of June, did not entitle the plaintiff to proceed *ex parte* within the meaning of the agreement (*x*).

And there should be, not only an actual appointment and a notification of such appointment to the other side, but the notice of the appointment must be express in its terms. Thus, where the notice sent by a claimant to a railway company was, "Take notice, that it is *my intention* to nominate and appoint S. M. as my arbitrator," it was held to be insufficient, although the claimant proceeded to say in the notice, that if the company failed to nominate an arbitrator, "I, the said T. B. (the claimant), will appoint the said S. M. to act on behalf of both parties" (*y*).

Before an arbitrator can act on behalf of both parties upon the appointment of the claimant, it seems that there must be two appointments. The claimant should appoint an arbitrator on his behalf, and then, after notification of such appointment and request in writing, if the other party fails for the space of fourteen days to

By Arbitration.

What is a valid nomination and appointment.

Tew v. Harris.

Notice of appointment.

(*u*) Ibid.

(*x*) *Tew v. Harris*, 11 Q. B. 7; S. C., 17 L. J. (Q. B.) 1.

(*y*) *Bradley v. L. and N. W. R. Co.*, 20 L. J. (Exch.) 3; S. C., 5 Exch. 769; 1 L., M. & P. 597.

By Arbitration.

appoint an arbitrator on his behalf, the claimant may appoint one to act for both. The ground for requiring an actual appointment of an arbitrator by the claimant is, that the other party may consider whether he will acquiesce in that appointment (a).

Vacancy of arbitrator to be supplied.

8 & 9 Vict. c. 18, s. 26, App. 50.

The statute then enacts, that if, before the matters so referred shall be determined, any arbitrator appointed by either party die or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Appointment of umpire, sect. 27.

Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire (b), to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special act; and if such umpire shall die, or become incapable to act, they shall forthwith, after such death or incapacity, appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final (c).

Board of Trade may appoint an umpire, sect. 28.

If, in either of the cases aforesaid, the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade (d), in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire, on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special act, shall be final (e).

(a) 5 Exch. 773.

(b) The umpire should be a perfectly disinterested person. Where the arbitrators appointed as umpire a surveyor who had been employed professionally by a railway company, in which he was also a shareholder, whose interests were intimately connected with the company disputing the compensation, which was the subject of the reference, K. Bruce, V. C., said—"I am not clear that he ought to have been appointed an umpire, in point of delicacy. I should, however, be going too far to set aside the award on this ground. There are some things in this case which it would have been better had they been otherwise, but I think that there are no judicial grounds on which to set aside the award. It is saved very narrowly, in my judgment." *Re Elliott*, 2

De G. & Sm. 17; 12 Jur. 445.

(c) 8 & 9 Vict. c. 18, s. 27, post, App. 50; see sect. 37; and *Re Stroud*, 8 C. B. 502.

(d) The appointment of an umpire under this section, should (and usually does) purport to be made by the lords of the committee, and should be (and usually is) signed by one of the secretaries. 5 & 6 Vict. c. 55, s. 19, post, App. 14. In *Wilts, Somerset and Weymouth R. Co. v. Fooks*, 3 Exch. 728, an objection was taken to an appointment of an umpire, on the ground that it was not so made; but the objection was considered too doubtful to be decided on a motion to set aside the award. The jurisdiction of the Board of Trade is treated of, post, Ch. IX.

(e) 8 & 9 Vict. c. 18, s. 28, post, App. 50.

If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special act, in the same manner as if such arbitrator had not been appointed.

By Arbitration.

In case of death of arbitrator.
8 & 9 Vict. c. 18, s. 29, App. 50.

If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse, or for seven days neglect to act (*f*), the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties (*g*).

In case of refusal or neglect to act, sect. 30.

If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid (*h*).

If no award be made in twenty-one days, then umpire to act, sect. 31.

The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose (*i*).

Powers as to evidence, sect. 32.

Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall, in the presence of a justice, make and subscribe the following declaration (*k*) (that is to say):—

Arbitrators and umpires to make declaration, sect. 33.

“I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act [*naming the special act*].

“A. B.

“Made and subscribed in the presence of .”

(*f*) Where an inclosure act directed an arbitrator to make an award within six months from the passing of the act, and directed that another arbitrator should be appointed if he should neglect or refuse to act, and the arbitrator so appointed by the act, under an erroneous impression as to a legal question, declined to make an award within the six months, it was decided that this amounted to a neglect to act, and the appointment of a new arbitrator was held to be good. *Willoughby v. Willoughby*, 9 Q. B. 923.

(*g*) 8 & 9 Vict. c. 18, s. 30, post, App. 50.

(*h*) Id. s. 31. See the cases on this section, post, 291.

(*i*) 8 & 9 Vict. c. 18, s. 32, post, App. 51.

(*k*) This declaration need not be made

before a justice of the county in which the lands, the subject of the compensation, lie. *Davies v. Staffordshire R. Co.*, 21 L. J. (M. C.) 52; 2 L., M. & P. 599. Where an umpire, appointed on the 17th May, made the declaration on the 27th May, before he entered on the matters referred, it was held to be sufficient. *Bradshaw's Arbitration*, 12 Q. B. 562; 17 L. J. (Q. B.) 362. And where an umpire omitted altogether to make the declaration, and where, after the expiration of three months, he discovered his error, the attornies of both sides signed a consent to go on and take no objection, Mellor, J., refused to set aside his award. *Palmer v. Metropolitan R. Co.*, 31 L. J. (Q. B.) 259.

By Arbitration.

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor (*n*).

Costs of arbitration.

8 & 9 Vict. c. 18, s. 34, App. 51.

All the costs of such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the company, unless the arbitrators shall award the same or a less sum than shall have been offered by the company, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions (*o*).

Award to be delivered to the company, sect. 35.

The arbitrators shall deliver their award in writing to the company (*p*), and the said company shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party, or any person appointed by him for that purpose.

Submission may be made a rule of court, sect. 36.

The submission to any such arbitration may be made a rule of any of the superior courts (*q*), upon the application of either of the parties.

(*n*) 8 & 9 Vict. c. 18, s. 33, post, App. 51.

(*o*) Id. s. 34. See the cases on this section, post, 393.

(*p*) This section imposes upon the company the direct duty of taking up the award, and therefore it is not a good return to a mandamus, which required the company to take up an award, to say that the umpire refused to give it up without being first paid his fees. The court said that the statute was not meant to take away the arbitrators' or umpire's right of lien at common law. *R. v. South Devon R. Co.*, 15 Q. B. 1043; 20 L. J. (Q. B.) 145. Where an award was made *ex parte*, by reason of the default of the company to appear before the arbitrator, a mandamus was granted to compel the company to take up the award, although it was endeavoured to be shown as cause against granting the writ, that the affidavits did not show that the lands had been injuriously affected; that the claimant also had not stated in his notice, given under sect. 23 of the act, what was the extent of his interest in the land, and had also in his notice required payment of the sum demanded within seven days, instead of twenty-one days as provided by sect. 68. *R. v. Sutton Harbour Commissioners*, Weekly Rep. 1853-4, p. 10.

(*q*) This provision rests upon the stat. 9 & 10 Will. 3, c. 15, which enacts, "that all merchants and others, who desire to end any controversy, suit or quarrel (for which there is no other remedy but by personal action or suit in equity), may agree that their submission of the action or suit to ar-

bitration or umpirage shall be made a rule of any of the king's courts of record, and may insert such agreement in their submission or promise, or condition of the arbitration bond: which agreement being proved upon oath by one of the witnesses thereto, the court shall make a rule that such submission and award shall be conclusive; and, after such rule made, the parties disobeying the award shall be liable to be punished as for a contempt of the court, unless such award shall be set aside for corruption, or undue means used in its procurement, or other misbehaviour in the arbitrators or umpire, proved on oath to the court, within one term after the award is made. And by 3 & 4 Will. 4, c. 42, ss. 39-41, submissions to reference, containing an agreement that such submission may be made a rule of court, shall not be revocable except by leave of the court or a judge; and the court or any judge thereof may from time to time enlarge the term for making the award; and it shall be lawful for the court or any judge to command the attendance of witnesses or the production of documents, and disobedience shall be deemed a contempt of court; and persons wilfully and corruptly giving any false evidence shall be guilty of perjury. A submission may be made a rule of court in vacation as well as in term. *Re Taylor*, 5 B. & A. 217. It has been ruled that, under this section, the submission to arbitration may be made a rule of court, in Chancery, and an order nisi may be afterwards obtained to set aside the award, without giving notice to the other party. *Re Elliott*, 2 De G.

No award made with respect to any question referred to arbitration can be set aside for irregularity or error in matter of form (s). By Arbitration.

Arbitrators, in estimating the purchase-money or compensation, are required to regard not only the value of the land to be purchased, but also the damage to be sustained, by reason of the severing of the lands taken, from other lands of the owner (t). Award not to be set aside for form.
8 & 9 Vict. c. 18,
s. 37, App. 51.

Severance damage.

There are also cases where the exclusive jurisdiction to decide on disputed compensation is vested in arbitrators (u). Thus, in all cases where the compensation has been ascertained by a surveyor, by reason that the party could not be found, or was absent from the kingdom, such party, if dissatisfied, may, before he shall have applied to the Court of Chancery for the money deposited in the Bank, require the question of compensation to be submitted to arbitration, as in other cases of disputed compensation (Sects. 64, 65); and if a further sum Other cases where the arbitration clauses are applicable.

& S. 23. See the form of such an order, id. It is not necessary to make the award or the appointment of the umpire a rule of court. *Re Bradshaw's Arbitration*, 12 Q. B. 562. In that case the rule directed that "the two several appointments of arbitrators, or submissions to arbitration, executed by the parties respectively, should be respectively entered and made a rule of this court," and this was held sufficient. Where claimants who had made an appointment of an arbitrator under sect. 25, refused to produce it, for the purpose of enabling the registrar to draw up an order which had been obtained by the company, making the submission a rule of court, the court refused a motion on behalf of the company, that the order might be drawn up, or that the landowners might produce the appointment; but there being in the affidavits of the landowners, in opposition to the motion, a statement that their arbitrator had been duly appointed, and also a recital to the same effect in an appointment of an umpire, the court, on a subsequent motion, ordered the submission to be made a rule of court. *Hawley v. North Staffordshire R. Co.*, 2 De G. & Sm. 33. It has been laid down, that statements laid before the arbitrator, or submission, which did not contain consent that the admission might be made a rule of court, could not be made so. *Re Ware*, 9 Exch. 400; *Dawson v. York and North Midland R. Co.*, 9 Exch. 401, note. But see now 17 & 18 Vict. c. 125, s. 17.

(s) It is difficult to lay down any general rules as to the distinction between matters of form and matters of substance. It may be useful, however, on this point, to refer to the decisions on 5 Geo. 2, c. 19, which empowered justices on appeal to amend "defects of form" in judgments or orders. See *R. v. Great Bedwin*, Burr. S. C. 163; *R. v. Chilverscoton*, 8 T. R.

178; *R. v. Amlwch*, 4 B. & C. 757; *R. v. Bingley*, 4 B. & Ad. 567, n. See also *Brook v. Jenney*, 2 Q. B. 265. Where an umpire stated in his award that he had heard and considered "the evidence produced by the said company and the said J. S.," and it appeared that the company had not tendered any evidence before the umpire, Lord Cottenham, C., said—"There may be an irregularity, or at least an inaccuracy of expression, in this, but under the act of Parliament there is an express provision that no award is to be set aside for any irregularity in matter of form; it cannot be carried beyond that; there is nothing in substance in it; it does not occasion any mischief at all, whether the word 'and' or the word 'or' is used; nobody is injured by it, and it is a mere inaccuracy in the use of a term often convertible." *Skerratt v. North Staffordshire R. Co.*, 5 Railw. C. 178. All applications to set aside an award must be made before the end of the term next after the publishing of the award.

(t) 8 & 9 Vict. c. 18, s. 63, post, App. 55. But, unless otherwise required by the parties, the award may be given for one entire sum, without distinguishing the sum awarded for the price of the land, and the sum allowed for severance. *Bradshaw's Arbitration*, 12 Q. B. 572; 17 L. J. (Q. B.) 362; *Re Duke of Beaufort and Swansea Harbour Trustees*, 29 L. J. (C. P.) 241.

(u) The Companies and Railways Clauses Consolidation Acts contain a series of clauses relative to the settlement of disputes by arbitration, nearly similar to those we have above transcribed, but there are some variations in respect to costs and other matters which will make it important to consider, in some cases, under which act an arbitration is proceeding. See 8 & 9 Vict. c. 16, ss. 128—134, post, App. 40, and 8 & 9 Vict. c. 20, ss. 126—137, post, App. 96.

By Arbitration.

8 & 9 Vict. c. 18,
s. 67, App. 55.

is awarded, the company are required to pay the same: (Sect. 66.) In such cases, all the costs incident to the arbitration are borne by the company; but if no further sum be awarded, such costs are in the discretion of the arbitrators: (Sect. 67.) And if persons are entitled to a right of pre-emption of superfluous lands, and no agreement can be made between such persons with the company as to the price, then the price must be ascertained by arbitration; and the costs of the arbitration in such cases are in the discretion of the arbitrators: (Sect. 130.)

Compensation to
mine owners.

8 & 9 Vict. c. 20,
s. 81.

So, in all cases where the company are required, from time to time, to make compensation to the owners of mines lying on both sides of a railway, for all such losses and expenses as are particularly mentioned in the statute, any dispute as to the amount of compensation in respect of such losses and expenses must be settled by arbitration.

It belongs rather to a treatise on the Law of Arbitration to discuss, in any detail, the numerous questions which may arise on the subject now under consideration, and we therefore content ourselves with making a few remarks on some leading points, which relate to the construction of the foregoing arbitration clauses in the Consolidation Acts.

What is a *dispute*
to be settled by
arbitration.

But, first, it may be observed, that it is clear that when a claimant says he is damaged, and therefore entitled to compensation, but the railway company contend that there is no damage, and therefore no compensation, this is a dispute as to the amount of compensation to be settled by arbitration. If the arbitrator finds the damage nominal, or infinitesimally small, he may find that the amount of compensation is nil (*x*). And if upon a reference to an arbitrator as to the price to be paid for land and severance damage, his award is silent as to severance damage, it is nevertheless good (*y*).

With respect to the time within which the award should be made.

Within what time
an award should
be made.

8 & 9 Vict. c. 18,
s. 31, App. 51.

It appears, by sect. 31, that the arbitrators must make their award within twenty-one days after the appointment of the last arbitrator, or within such extended time as shall have been appointed for that purpose. But the arbitrators cannot enlarge the time beyond three months in the whole, because section 23 requires the award to be made within that period (*z*). The umpire may, however, be appointed

(*x*) *Bradby v. Southampton Local Board of Health*, 4 E. & B. 1014. See post, 304.

(*y*) *Duke of Beaufort v. Swansea Harbour Trustees*, 29 L. J. (C. P.) 241.

(*z*) In *Evans v. Lancashire and Yorkshire R. Co.*, 1 E. & B. 754, it was held that no

action lay upon an award made after the three months. But see *supra*, p. 283, note (*n*), and *Palmer v. Metropolitan R. Co.*, there referred to, where the court refused to set aside an award made after three months by consent.

*By Arbitration.**Re Bradshaw.*

at any period within the above-named three months, although the arbitrators have failed to make their award at the expiration of the twenty-one days, and have also failed to extend the time. *In re Bradshaw* (a) is a leading case on this subject. There the company appointed their arbitrator on the 23rd March, and the claimant his on the 6th April. These arbitrators did not appoint an umpire, or enter on the matters referred; and both parties, before the 29th April, joined in applying to the Board of Trade to appoint an umpire. On 29th April the claimant objected to the appointment of any umpire, not a barrister. The company afterwards made a request to the arbitrators; and, after seven days, another application to the Board of Trade, who, on 17th May, appointed a surveyor to be umpire. He made his declaration on 27th May, and his award on 26th July. Upon these facts the objections were, that the appointment of an umpire must be completed within twenty-one days, and the award of the umpire be made within three months after the appointment of the arbitrators; that their appointment was complete on 6th April, and that, consequently, the appointment of the umpire on 17th May, and the making of the award on 26th July, were too late. But Lord Denman, C. J., said:—

“The powers given for arbitration continue for three months after the arbitrators are appointed, and are determined then only by sect. 23, enacting that the question shall be settled by a jury if, when the matter shall have been referred to arbitration, the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made. Then the 31st section, providing that the umpire shall determine where neither of the arbitrators refuses or neglects to act, and they fail for twenty-one days from their appointment to make their award, operates only to take from the arbitrators the power of making an award, and to vest that power in the umpire, but not to render void the submission to arbitration, and the other powers incidental thereto, such as the appointment of an umpire. The statute contemplates three cases where a single arbitrator is to award, and in each of those cases he has three months for the purpose; viz. where a single arbitrator is originally appointed under sect. 25, or a vacancy is left unsupplied under sect. 26, or one of the two refuses or neglects to act under sect. 30. It is to be observed, that the umpire cannot be brought into action in either of these cases. Then sect. 31 provides for two arbitrators acting and failing to award. If they so fail for twenty-one days, and do not extend their time, the power to award is taken from them, and vested in such umpire as is duly appointed under the other provisions of the statute, which are not affected by this section. The incapacity to make an award has no effect upon the power given to the arbitrators under sect. 27, and to the Board of Trade, on their default, under sect. 28, to appoint a new umpire, in case of the death or failure of the first. And we see no reason why the same incapacity to award should have any effect upon the powers given for appointing the original umpire. If the construction contended for by the claimant is correct, it might happen that at the end of twenty-one days, the power to award might cease, and the power to resort to a jury still be suspended for the residue of three months,

(a) 12 Q. B. 562; 17 L. J. (Q. B.) 362; acc. *Holdsworth v. Barsham*, 31 L. J. (Q. B.) 145; 32 L. J. (Q. B.) 289.

By Arbitration.
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The umpire has
three months to
make his award.

which would be a delay without purpose. On these grounds we have come to the conclusion that the appointment of the umpire was valid."

It is also important to notice, that in cases where an umpire has been appointed, the three months allowed him for making the award is to be calculated from the period when the duty of making the award first devolved upon him (*a*). This was decided by Lord Cottenham, C., who said that, under sect. 31, the arbitrators have twenty-one days, in the first instance, to make their award, or they may enlarge the time for themselves; not, however, beyond the three months mentioned in sect. 23, and whenever it happened either at the expiration of the twenty-one days, or the expiration of the enlarged time, that the duty of the umpire commenced, then the umpire had three months allowed him to perform his duty. And in *Bradshaw's case* (*b*), Lord Denman, C. J., adopting Lord Cottenham's decision, said:—

"The remaining objection is, that the award of the umpire is too late, there being more than three months between the appointment of the arbitrators and his award. But we find it decided, in *Skerratt v. North Staffordshire R. Co.*, that the three months for the umpire commences from the duty devolving upon him. In this decision we fully concur; and as this award of the umpire was made within three months from the duty devolving upon him, and indeed within three months from his appointment, it is not too late."

And it has been recently decided that where by consent the time is enlarged beyond the three months the Court will not set aside the award (*c*). The arbitration clauses being introduced for the benefit of the parties, they are at liberty to renounce at their pleasure the advantages which those clauses afford (*d*).

If the arbitration
fails altogether,
the claimant need
not commence
proceedings de
novo.

Where arbitrators had been regularly appointed to decide a claim for purchase-money and compensation, but they made no award, and the Board of Trade refused to appoint an umpire, because more than three months had elapsed since the appointment of the arbitrators, Wightman, J., decided the claimant was not bound to begin de novo, under sect. 68, but that the case fell under sect. 23, and that on the refusal of the company to submit the question of compensation to a jury, the claimant was entitled to a mandamus to compel the company to issue a warrant to the sheriff (*e*).

Costs.

Some cases must also be noticed upon the subject of the costs of arbitrations, under the Lands Clauses Act. These are provided for, as we have seen, by sect. 34 (*f*).

(*a*) *Skerratt v. North Staffordshire R. Co.*, 2 Phil. 475; 5 Railw. C. 177; 17 L. J. (Ch.) 161; *Bradshaw's Arbitration*, ante, 291.

(*b*) *Ubi supra*.

(*c*) *Palmer v. Metropolitan R. Co.*, 31 L. J. (Q. B.) 259.

(*d*) *Ibid.*, citing *Caledonian R. Co. v. Lockhart*, 3 M'Q. 808, and *Tyerman v. Smith*, 6 E. & B. 719.

(*e*) *Re South Yorkshire and Goole R. Co.*, 18 L. J. (Q. B.) 333; 14 Jur. 1093; 7 D. & L. 36.

(*f*) *Ante*, 388.

It seems that under sect. 34, if the company do not offer any sum, and there is a compulsory arbitration under the statute, the claimant ought to have his costs, as the statute provides that all the costs shall be borne by the company, unless the arbitrators shall award the same or less than has been offered by the company (*g*). In a case in which a claimant, the amount claimed under sect. 68 not being paid within twenty-one days, without attempting to procure the appointment of a single arbitrator, immediately nominated an arbitrator on his behalf, but omitted to deliver the nomination to such arbitrator, and the promoters subsequently and before nominating their arbitrators tendered a sum for damages and costs, which was refused, and exceeded the amount afterwards awarded by the umpire: it was held, that the claimant was not entitled to the costs of the arbitration, but the Court declined to lay down any rule as to the time within which a tender must be made to relieve the party making it from costs under sect. 34 (*h*).

By Arbitration.
No sum tendered.

Sum tendered before delivery of nomination to arbitrator.

Where a landowner claimed compensation, first, in respect of the value of his land; and secondly, in respect of damage done to other lands held therewith, and the matter was referred to an arbitrator, under sect. 23, and the company made no previous offer of any sum in respect of either claim, and the arbitrator awarded a sum of money for the value of the land, but found that the claimant had no claim to compensation in respect of the damage to his other lands, it was contended that the claimant was entitled, under the 34th section, to all the costs of and incident to the arbitration, just as if one claim only had been made and allowed; but the Court of Queen's Bench decided that the arbitrator was not bound to allow the claimant the whole of his costs, but that he might leave each party to bear his own costs incident to the claim which was disallowed. The Court was also of opinion that if a single claim were made and wholly disallowed, the claimant would not be entitled to any costs, although the company should not have made any previous offer in respect of the alleged damage (*i*).

Where the costs are divisible.
R. v. Byrom.

If parties by a deed or other instrument agree to refer a case of compensation to arbitration, without referring to the provisions of the Consolidation Acts as to costs, and the agreement to refer is also silent on that subject, the claimant is not entitled to any costs, although the award may be of a larger sum than the company had previously offered as compensation (*h*).

Where the power to give costs should be expressly given.

In a case in which a statute directed that in certain cases a party

What costs allowed.

(*g*) *Martin v. Leicester Waterworks Co.*, 27 L. J. (Exch.) 432.

969. See the cases as to costs, *infra*.

(*h*) *Yates v. Mayor of Blackburn*, 29 L. J. (Exch.) 447.

(*k*) *Ex parte Reynal*, 16 L. J. (Q. B.) 304.

(*i*) *R. v. Byrom*, 16 Jur. 640; 17 Q. B.

See *Martin v. Leicester Waterworks Co.*, 27 L. J. (Exch.) 432; *Eccles v. Mayor of Blackburn*, 30 L. J. (Exch.) 358.

By Arbitration.
R. v. Justices of
York.

who succeeded in obtaining compensation before a jury "should be entitled to recover the costs and expenses of such notice, precept and of summoning and returning such jury and witnesses, and also of the inquest; it was held, that this included charges for the attornies' attendance, and for briefs, witnesses, and the like, but not the expenses incurred by surveyors in valuing the premises; if witnesses, surveyors would be on the same footing as others (*l*). But where in a similar case the statute directed that a party should be entitled to receive all the costs of summoning such jury, and the expenses of witnesses, it was held, that the party was not entitled to the general costs of the inquiry (*m*).

Whether award
should find
amount of costs.

London and
North-Western
R. Co. v. Quick.

A question has been raised whether, under sect. 34, the arbitrator or umpire ought to find and state in his award the amount of costs to be paid, or whether a supplementary certificate or award may be subsequently made. The decisions are not uniform on this point, but the practice seems to be, to give a separate certificate for costs. In *L. and N. W. R. Co. v. Quick* (*n*), Erle, J., in discharging a rule which had been obtained to enforce the payment of costs pursuant to an award, expressed an opinion that sect. 34 imposed on the arbitrators or umpire the duty of ascertaining whether the right to the costs arose, and of including it in their award, when it existed; that it appeared to him to be the intention of the legislature that the right to costs, and on the part of the claimant the amount of them, should be settled in the same way and by the same instrument as the costs of the arbitrator. That learned judge also observed, that this construction was confirmed by the consideration that the remedy for obtaining payment of costs included in the award was easy, while the process of obtaining a certificate of settlement of costs, from persons who were arbitrators, but who were not to decide whether they were due, and of applying for a rule on affidavits of essential facts, was, at all events, complex and anomalous, and, in his opinion, not legal.

Gould v. Stafford-
shire Potteries
Waterworks Co.

When the same question was first discussed in the Court of Exchequer, upon a motion to set aside an award which did not settle the amount of costs, the judges expressed considerable doubt as to the construction of the statute (*o*); and in a subsequent case (*p*), upon a demurrer to a declaration, that Court distinguished the case of *L. and N. W. R. Co. v. Quick*, from which, however, they expressed dissent, and held that the finding as to the costs of the claimants need not be incorporated in the award, but may be assessed by a subse-

(*l*) *R. v. Justices of York*, 1 A. & E. 828.

(*m*) *R. v. Gardner*, 6 A. & E. 112; *R. v. Sheriff of Warwickshire*, 2 Railw. C. 661.

(*n*) 5 D. & L. 685.

(*o*) *Wilts, Somerset and Weymouth R. Co. v. Fooks*, 3 Exch. 728. [This case was sub-

sequently compromised.]

(*p*) *Gould v. Staffordshire Potteries Waterworks Co.*, 5 Exch. 214; 19 L. J. (Exch.) 281; 14 Jur. 528; 6 Railw. C. 568; 1 L. M. & P. 264.

quent instrument under the hand of the party who made the award. *By Arbitration.*
 Lord Wensleydale observed:—

“The sole question is, whether, looking at the several clauses of this statute, the legislature meant that all to be done by the arbitrator or umpire was to be included in a single award or umpirage, which he was empowered to make; and I think it quite clear that the legislature did not intend every matter of dispute to be comprised in a single award. By the 23rd section, the only matter referred to the arbitrators is the compensation to be paid for the lands required to be taken for the purposes of the undertaking; all they have to do is to ascertain the amount that ought to be so paid. Then we come to the 34th section, which directs that all the costs of any arbitration are to be borne by the promoters of the undertaking, unless the arbitrators award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and those of the arbitrators shall be borne by the parties in equal proportions; so that the necessity for making the taxation of costs depends entirely on the result of the award, whether a larger sum has been awarded than was offered by the promoters of the undertaking. Now the arbitrators or umpire have no power, in the first instance, to inquire into the costs, or anything beyond the compensation to be made; they are to determine each of the questions separately, the intention of the legislature being, that so soon as it becomes necessary that the costs of the arbitration should be determined by the arbitrators, they shall have the power to tax them by an instrument other than the award.”

Gould v. Staffordshire Potteries Waterworks Co.

The result appears to be, that the award need only show the amount of the compensation, and that it need not appear therein whether the claimant is entitled to costs, by reason of the arbitrators having awarded a larger sum than the company had previously offered. And further, that the adjudication of costs may be made after the expiration of the period limited for making the award (*q*). It has also been ruled that an umpire has power over the costs when he makes the award: and that the word “arbitrators” in sect. 34 includes an umpire, who is therefore the proper person to settle the amount of the costs (*r*).

Costs may be given after the expiration of the three months. The umpire has jurisdiction over costs.

The best, if not the only, way of recovering the costs is by action (*s*).

It is not necessary to detail with minuteness the practice which prevails in conducting an arbitration. It may be observed, generally, that arbitrators have the most extensive discretion as to the

The manner in which an arbitration should be conducted.

(*q*) See *Martin v. Leicester Waterworks Co.*, 27 L. J. (Exch.) 432, where an arbitrator, appointed by an agreement which incorporated sect. 34, having awarded compensation, afterwards, by a separate writing, settled the costs, and the claimant recovered them in an action. See also *Collins v. South Staffordshire R. Co.*, 7 Exch. 5; *Yates v. Mayor of Blackburn*, 29 L. J. (Exch.) 447, similar actions. See also *Holdsworth v. Barsham*, 31 L. J. (Q. B.) 145.

(*r*) *Gould v. Staffordshire Potteries Waterworks Co.*, ante, note (*p*). See also *Bowen v. Williams*, 3 Exch. 93, where the word arbitrators, in a judge's order, was held to include, by that description, the umpire who had made the award. It is to be observed, that by sect. 31 “the matters” by the statute referred to arbitrators are to be determined by the umpire, which seems clearly to show that he has power over the costs.

(*s*) See note (*q*), supra.

By Arbitration.
Mode of conducting arbitration.

mode of conducting the inquiry before them (*t*); and as laymen are frequently selected to be arbitrators and umpires, there cannot be any doubt that they are entitled to avail themselves of professional assistance in conducting the inquiry and preparing the award (*u*). The evidence should always be taken in the presence of the parties or their agents (*x*); but it seems that an umpire may communicate privately with the arbitrators (*y*).

Where one of two arbitrators was absent at a meeting, and, notwithstanding a protest from the parties who had appointed him, the other arbitrator, together with the umpire, whose powers to act had not at that time arisen, heard evidence, and the umpire subsequently made his award, after his power to act had arisen, but without giving any notice to the parties who had protested, the award was set aside as invalid (*z*). But where the arbitrators and the umpire were all present from the commencement of the proceedings, and heard all the evidence, whilst sitting together, and the umpire afterwards, on the disagreement of the arbitrators, made his award without further communication with the parties, Knight Bruce, V. C., decided that the award could not be set aside on the ground that the umpire joined in the inquiry before the time for his acting had arrived (*a*). Unless an award is shown to be clearly defective and illegal, the courts of law will not set it aside upon motion, but will leave the parties to their ordinary remedy; and if the party objecting to the award is a landowner, whose lands the company have taken, he may raise the question of illegality, by bringing an action of trespass or ejectment (*b*).

When awards are not set aside upon motion.

When awards are conclusive and cannot be impeached.

In another part of this work (*c*) a remark is made on the apparent injustice of permitting all verdicts found by juries summoned under the Consolidation Act to be conclusive, whilst errors in fact or in law, committed at *Nisi Prius*, are frequently re-argued and corrected in our Courts. The same remark is applicable to awards made under the Consolidation Acts. Numerous instances have occurred in which parties aggrieved have endeavoured in vain to obtain redress by

(*t*) *Tillam v. Copp*, 5 C. B. 211.

(*u*) *Threlfall v. Fanshawe*, 19 L. J. (Q. B.) 334; 1 L., M. & P. 340. The doubts thrown on this case in *Parkinson v. Smith*, 30 L. J. (Q. B.) 178, do not apply to the point for which it is here cited, though its authority as a decision is shaken. See on the power of an arbitrator to call in experts, men of science or valuers, *Caledonian R. Co. v. Lockhart*, 3 M'Q. 811. In *re Underwood, and Bedford and Cambridge R. Co.*, 11 C. B. (N. S.) 442, it was held to be improper to employ the attorney of one of the parties to assist in drawing the award.

(*x*) *R. v. Dobson*, 6 Q. B. 637; *R. v. Plews*,

6 Q. B. 845.

(*y*) *Skerratt v. North Staffordshire R. Co.*, 5 Railw. C. 177.

(*z*) Cor. K. Bruce, V. C., affirmed on appeal by Lord Cottenham, C. *Ex parte Hawley*, 5 Railw. C. 383; 2 De G. & S. 33; 12 Jur. 389.

(*a*) *In re Elliott*, 2 De G. & S. 17; 12 Jur. 445.

(*b*) *North Staffordshire R. Co. v. Landor*, 2 Exch. 235; *Same v. Wood*, 2 Exch. 244; *Wilts, Somerset and Weymouth R. Co. v. Fooks*, 3 Exch. 728; S. C. in Chancery, 2 Macn. & G. 357. See also 4 E. & B. 1015.

(*c*) Post, 319.

applying to the Courts. Mistakes made by the arbitrator on matters of law do not generally invalidate an award (*d*): and, even where the decision of the arbitrator has been contrary to the evidence, there is no sufficient ground afforded for setting aside the award (*e*), unless collusion, or, in other words, fraud, is proved. The reason why awards cannot be impeached for errors in fact or errors in law, not apparent on the face of the award, seems to be founded on the principle that arbitrators are judges of the parties own choosing (*f*). A distinction on this point seems, however, to exist in the case of awards made under the Consolidation Acts, because, as we have seen, if either of the arbitrators refuse to concur in the appointment of an umpire, the Board of Trade are empowered to appoint him, without any previous communication with either of the contending parties. There is, however, one remedy which may be available in some instances. If it is found that the arbitrators or umpire are entertaining a question which they ought not to entertain, an application may be made to the Court or a judge to revoke the submission (*g*)—for although 8 & 9 Vict. c. 18, s. 25, enacts that neither party shall have power to revoke the submission, without the consent of the other, the Court or a judge would still have the power to interfere, if it appeared that arbitrators or an umpire, appointed under the acts, are about to exceed their jurisdiction.

Several instances of invalid awards are mentioned in other parts of this work. Thus, we have seen that an award is bad, if the previous notices are defective, so that the interest of the party in the matters to be adjudicated upon is left in doubt (*h*), or if the lands valued are different from those which were the subject of the notice to treat (*i*).

But where a deed of submission was made between L. and a railway company, and after reciting that the company were authorized to take certain lands, that they had given L. notice that they required his lands, and that it was agreed that they should become the purchasers thereof in the mode thereafter pointed out, it was covenanted that it should be referred to an arbitrator to determine the value to be paid for the lands; that the purchase-money should

By Arbitration.

When an award is invalid.

Award valid.
Lindsay v. Direct London and Portsmouth R. Co.

(*d*) Watson on Awards, 278. In *Hodgkinson v. Fernie*, 27 L. J. (C. P.) 66, Cockburn, C. J., said—"It is not easy to reconcile all the cases as to how far the court interfere where the arbitrator has made an error either as to the law or the facts of the case, but the current of modern authorities is to the effect, that, unless it appears upon the face of the award that the arbitrator has proceeded upon some ground which will not in point of law support his decision, the court will not interfere."

(*e*) *Bradshaw's Arbitration*, 12 Q. B. 562;

17 L. J. (Q. B.) 362.

(*f*) 1 Bac. Abr. tit. Arbitrament, D.; *Fuller v. Fenwick*, 3 C. B. 705.

(*g*) *Faviell v. Eastern Counties R. Co.*, 2 Exch. 344; 17 L. J. (Exch.) 223, 297. See *Hodgkinson v. Fernie*, 27 L. J. (C. P.) 66.

(*h*) Ante, 185.

(*i*) Ante, 186. An award made for regulating the mode in which the traffic was to be conducted on two railways was held to be good, in *Eastern Union R. Co. v. Eastern Counties R. Co.*, 22 L. J. (Q. B.) 371; 2 E. & B. 530.

By Arbitration.
Lindsay v. Direct
London and
Portsmouth R. Co.

be paid within three days after the making of the award, and "thereupon" L. should execute a conveyance, "subject to the payment of the amount of such purchase-money into the Court of Chancery, under the circumstances and in the manner provided for by the Lands Clauses Consolidation Act." And the arbitrator found the value of the land at a certain sum, and directed it to be paid "within three days after," &c., "subject," &c. (following the words of the submission), and a rule having been obtained, calling upon the company to show cause why they should not pay the sum of money, under 1 & 2 Vict. c. 110, s. 18, Wightman, J., decided—1. That, assuming even that the arbitrator had exceeded his jurisdiction in ordering the money to be paid, the rest of the award was good; and that, as the award ascertained the amount of the purchase-money which the company by their deed of submission had agreed to pay, there was sufficient to enable the Court to make an order on them to pay it. 2. That the payment of the money and the execution of the conveyance by L. were not dependent conditions, but that the payment was to precede the conveyance, and that it was, therefore, no answer to the rule that a conveyance had not been tendered. 3. That it was no objection that it was not shown that the company had taken possession of the land (*k*).

Award valid.
Re Ware.

By a Canal Act, which incorporated the Lands Clauses Act, the company were authorized to take a field called "Clayfield," held by one W., under a lease from the warden of All Souls, Oxford. Notice to take this field having been given, and the parties being unable to agree as to the terms, an arbitrator was appointed under the act to settle the question of disputed compensation. The company had taken a portion of Clayfield, but had left the rest in the possession of W., without, however, giving him any access to it; but they had delivered to the warden a grant of a right of road to that portion, which it was stipulated was to enure for the benefit of W. and his tenants, the way so granted being more commodious than before. The arbitrator awarded to W. a pecuniary compensation in respect of the works of the company and the lands taken by them. An application to set aside the award having been made, on the grounds that the arbitrator had omitted to adjudicate on the right of way to Clayfield, and that he had not awarded damages for prospective damage which might be caused by floods, or apportioned the rent of the leasehold land, or determined in what proportion the rent should remain chargeable:—It was decided, that the arbitrator had acted rightly under the Lands Clauses Act in awarding a money compensation only, and that he would have exceeded his powers if he had adjudicated either on the question of the right of way, or of the

(*k*) *Lindsay v. Direct London and Portsmouth R. Co.*, 1 L., M. & P. 529.

apportionment of the rent; also that the award was right in not giving compensation for injuries which had not actually arisen (*l*). By Arbitration.

Where an award was made after the company had entered on the lands under sect. 85, and the claimant disputed the validity of the award, and refused to make a title to the lands, and was prosecuting an action against the company to have the question as to the award determined, and the company, on the refusal of the claimant to send in an abstract of title, paid the amount of compensation awarded into the bank, and executed a deed-poll under sects. 76 and 77, and then applied to have a large sum of money restored to them, which they had originally paid into Court in pursuance of sect. 85, and this application being opposed by the claimant, who contended that, as the award was bad, the fund ought to remain in Court until the respective rights of the parties were determined; Lord Cottenham, C., said, that there was not sufficient ground stated to him to induce him to refuse the application; and he ordered the money to be paid to the company (*m*).

If claimant disputes an award, the company may nevertheless withdraw their deposit made under sect. 85.

Where a claim for purchase-money and compensation was, by agreement between the parties, referred to arbitration, and the owner consented that the company should enter on the land, and an award was made by the arbitrators, but a dispute arose as to its validity, and the claimant thereupon gave the company a notice to quit the lands, and brought an ejectment, it was decided that the action would not lie, for the plaintiff had no right to revoke the consent which he had given, as to the entry on the land, and his remedy was to proceed to enforce the payment of the amount of compensation (*n*).

Claimants disputing award may not bring ejectment if they consented to the entry on the lands.

An award may be enforced by an action on the award, and the costs may also be recovered, although they are not mentioned on the face of the award (*o*). Or a more summary remedy may be resorted to under 1 & 2 Vict. c. 110, s. 18, when the submission is made a rule of Court; but it is not the practice of the Courts to grant applications under that statute, when any reasonable and well-founded doubts are raised as to the validity of the proceedings, because the defendants are deprived of the means of reviewing the decision of the Court, by a writ of error (*p*). It seems that an attachment will not lie against an incorporated company, like a railway company, for nonperformance of an award (*q*).

Mode of enforcing an award.

(*l*) *Re Ware*, 9 Exch. 395; 23 L. J. (Exch.) 145.

(*m*) *Re Fooks*, 2 Macn. & G. 357. See ante, 294, note (*o*).

(*n*) *Doe d. Hudson v. Leeds and Bradford R. Co.*, 20 L. J. (Q. B.) 486; 15 Jur. 946; 16 Q. B. 796.

(*o*) See ante, 294, note (*p*).

(*p*) *Mackenzie v. Sligo and Shannon R. Co.*, 9 C. B. 250; *L. and N. W. R. Co. v. Quick*, 5 D. & L. 685, ante, 294.

(*q*) *Mackenzie v. Sligo and Shannon R. Co.*, 9 C. B. 250; *R. v. Ledgard*, 1 Q. B. 619; but see *Bul. N. P.* 201; *R. v. Eastern Counties R. Co.*, 10 A. & E. 567.

*By a Jury.*IV. *Compensation assessed by a Jury.*

Enumeration of
the steps preliminary
to the inquisition.

8 & 9 Vict. c. 18,
s. 39, App. 52.

In all cases where purchase-money or other compensation is to be assessed by the verdict of a jury, the company are required to issue their warrant under their common seal, directed to the sheriff, or, if he be interested (*r*), to the coroner of the county, city, &c. in which the lands, the subject of the compensation, are situate (*s*), whereby they require him to summon a jury to assess the purchase-money and other compensation. It is not necessary to repeat the remarks which have already been made, as to the necessity of proceeding in strict compliance with the directions of the statute, in taking all steps preliminary to the holding of the inquisition. These steps in ordinary cases, are first a notice from the company to the owners, &c. of the lands, requiring them to treat (*t*). Secondly, the claim or reply of the owners, given in conformity with the terms of the notice (*u*). Thirdly, the notice from the company of their intention to issue a warrant, and a tender of a sum of money for compensation (*x*). Fourthly, the warrant from the company directed to the sheriff (*y*). Fifthly, the notice given by the sheriff to the company, of the time and place of holding the inquisition (*z*). Sixthly, a similar notice given by the company to the claimant of compensation (*a*). And, lastly, the verdict and judgment (*b*). In addition to these notices, it may in some cases be necessary for a claimant to give notice that he requires the company to take the whole of a house or other building (*c*), or he may give notice to the company, that he requires a special jury (*d*).

We have also seen, that in cases where the claimant demands compensation under sect. 68, he is required to give notice to the company of the amount of his claim, and he has also the option of expressing his desire to have the same assessed by a jury (*e*), and the company are required, under a heavy penalty, to issue their warrant to the sheriff, and the subsequent proceedings then follow as in ordinary cases.

The following is a summary of the clauses in the Lands Clauses

Sections relating
to the inquisition
and preliminary
proceedings.

(*r*) Where a warrant was issued to the sheriff, and it afterwards turned out that he was interested, the warrant and all proceedings under it were set aside. *R. v. Sheriff of Warwickshire*, 24 L. T. 211. And a certiorari was granted where the sheriff was a shareholder. *R. v. L. and N. W. R. Co.*, 9 L. T. (N. S.) 423.

(*s*) If the lands are situate in more than one county, the sheriff of each county has a concurrent jurisdiction, 8 & 9 Vict. c. 18, s. 3, post, App. 46.

(*t*) See ante, 180.

(*u*) See ante, 184.

(*x*) See ante, 187.

(*y*) See form, post, App. tit. *Forms*.

(*z*) 8 & 9 Vict. c. 18, s. 41, post, App. 52. See form, post, App. tit. *Forms*.

(*a*) 8 & 9 Vict. c. 18, s. 46, post, App. 53. See form, post, App. tit. *Forms*.

(*b*) 8 & 9 Vict. c. 18, s. 50, post, App. 53. See form, post, App. tit. *Forms*.

(*c*) See ante, 174.

(*d*) 8 & 9 Vict. c. 18, s. 54, post, App. 54. See form, post, App. tit. *Forms*.

(*e*) See ante, 193, 198. See form, post, App. tit. *Forms*.

Act relating to the subject now under consideration. We have already seen that, by sect. 38 (*f*), the company are required to give ten days' notice of their intention to summon a jury, and in such notice they are also required to state what sum they are willing to give for their interest in the lands sought to be purchased, and for the damage to be sustained by the execution of the works (*g*). If this offer be not accepted, the company issue their warrant to the sheriff of the county in which the lands are situate, or to a coroner, if the sheriff be interested (*h*), requiring him to summon a jury: (Sects. 39, 40.) On receipt of the warrant, the sheriff summons a jury of twenty-four qualified persons, and gives notice to the company (*i*) of the time and place appointed for the meeting, concerning both of which special provisions are made (Sect. 41); and a like notice must be given by the company to the claimant (*k*): (Sect. 46.) A juryman cannot be summoned, without his consent, more than once in every year: (Sect. 57.) The sheriff, under-sheriff, or other legal competent deputy (*l*), presides at the inquiry (*m*); and the party claiming compensation is to be deemed the plaintiff, and has all such rights and privileges as the plaintiff is entitled to in trials of actions at law (*n*) (Sect. 43): and if the party claiming compensation appears (Sect. 47), a jury of twelve persons is drawn in the usual manner: (Sect. 42.) Either party may request the sheriff to summon witnesses, or to order a view: (Sect. 43.) The jury and witnesses are sworn: (Sect. 48.) And if they or the sheriff neglect their duties, they are liable to pay certain penalties, and every penalty payable by a sheriff or juryman is to be applied in satisfaction of the costs of the inquiry, so far as the same will extend: (Sects. 44, 45.) Either party may have a special jury (*o*) (Sects. 54, 55); and, by consent, more than one inquiry may be had before the same special jury: (Sect. 56.) If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be

By a Jury.

8 & 9 Vict. c. 18,
s. 38, App. 51.(*f*) See ante, 187.(*g*) See form, post, App. tit. *Forms*.(*h*) See form of warrant, post, App. tit. *Forms*.(*i*) See form of this notice, post, App. tit. *Forms*.(*k*) Ibid.(*l*) How a deputy should sign, see *Stroud v. Watts*, 3 D. & L. 799, post, 303, note (*a*); also *R. v. Perkin*, 7 Q. B. 165.(*m*) See also the Interpretation Clause, tit. "Sheriff," post, App. 46; *R. v. Sheffield R. Co.*, 11 A. & E. 194; 1 Railw. C. 537.(*n*) As to the plaintiff's right to begin, and whether the sheriff has power to ex-mine into the preliminary matters, as to notices, &c., see *Taylor v. Clemson*, 2 Q. B. 999, 1019; 11 Cl. & F. 610, and post, 306.(*o*) The sheriff is bound to issue his warrant within twenty-one days, under sect. 68, although claimant may give notice for special jury, under sect. 54. *Glyn v. Aberdare R. Co.*, 28 L. J. (C. P.) 271. Any objection to the jurymen, on the ground that they are not qualified, must be taken by challenge; want of qualification is not a ground for setting aside the inquisition. *Re Chelsea Waterworks Co.*, 10 Exch. 731. See also *Cooling v. Great Northern R. Co.*, 15 Q. B. 486.

By a Jury.

Cases on the foregoing sections.

Presiding officer must not be interested.

ascertained by a surveyor appointed by two justices, in manner thereafter provided: (Sect. 47.)

The foregoing are the statutory provisions which regulate the preliminary proceedings before the sheriff. There are but a few decisions touching this part of our subject. As it is a general rule of law, that no interested person can act as a judge in a judicial proceeding (*p*), it is a fatal error if the sheriff or other presiding judge be interested in the matter. But any objection to the competency of the sheriff, or other presiding officer, must, if known (*q*), be taken at the hearing of the inquiry (*r*). Thus, where an inquiry directed to the sheriff was held before an under-sheriff, who was a shareholder in the company, but it appeared that the claimant's attorney was informed of that fact before the inquiry commenced, a certiorari to remove the inquisition was refused, on the ground that, as no objection was made until the verdict had been given, the claimant had waived any right to object (*s*).

If the under-sheriff be interested in the inquiry, as by being a shareholder in the company, the warrant ought nevertheless to be directed to the sheriff, and he may preside in person, or authorize some other disinterested party to preside as his deputy (*t*). It also seems that a challenge to the array is not given by sections 54 and 55 (*u*).

It may be convenient in this place to notice that, by some of the railway acts passed in 1864 (*x*), it is provided, that questions of disputed compensation to be assessed by a jury in the City of London are to be heard in the Lord Mayor's Court.

Proceedings at inquisition.

We now arrive at the clauses which relate to the proceedings at the inquisition, and the subsequent recording of the verdict and judgment.

Purchase-money to be assessed separately. Sect. 49.

Sect. 49 directs, that where the inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done, or to be done, to the lands held therewith, the jury shall deliver

(*p*) *R. v. Cheltenham Paving Commissioners*, 1 Q. B. 467; 10 L. J. (M. C.) 99; *R. v. Aberdare Canal Co.*, 19 L. J. (Q. B.) 251; 14 Q. B. 854.

(*q*) Where the interest of the sheriff was not discovered till afterwards, it was held that the claimant had not waived his right to object by attending the proceedings. *R. v. Sheriff of Warwickshire*, 24 L. T. 211.

(*r*) *Corrigal v. London and Blackwall R. Co.*, 5 M. & G. 247.

(*s*) *Ex parte Baddeley*, 5 D. & L. 575.

(*t*) *Worsley v. South Devon R. Co.*, 16 Q. B. 539; 20 L. J. (Q. B.) 254.

(*u*) Per Coleridge, J., *Cooling v. Great Northern R. Co.*, 15 Q. B. 496. In the same

case a plea to an action, brought to recover the sum assessed by a jury, to the effect that a jurymen had been improperly substituted for another jurymen previously sworn, was disallowed, as being vexatious, it appearing that no such objection had been mentioned in various previous proceedings, taken by the company to set aside the inquisition. See *Re Chelsea Waterworks Co.*, 10 Exch. 731.

(*x*) "The Charing Cross Railway Act, 1864," 27 & 28 Vict. c. xcii. s. 7. "The London, Chatham & Dover Railway (New Lines) Act, 1864," 27 & 28 Vict. c. cxv. s. 50.

their verdict (*y*) separately for the *sum of money* to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the *sum of money* to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands, by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands, by the exercise of the powers of the acts (*z*).

By a Jury.

8 & 9 Vict. c. 18,
s. 49, App. 53.

By sect. 50, the sheriff before whom such inquiry (*a*) shall be held shall give judgment for the purchase-money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept (*b*) by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate, in respect of which such purchase-money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same, or true copies thereof, shall be good evidence in all courts and elsewhere; and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom.

The verdict and
judgment,
Sect. 50.

There was for a long time considerable doubt upon the question whether or not the jury have power to inquire into the right or title of the claimant to compensation. In 1854, however, a majority of the judges of the Court of Queen's Bench decided, in *R. v. L. and N. W. R. Co.* (*c*), that they have *not* any such power, but must assume that the claimant is entitled to compensation, and assess the damages upon that assumption. And, in 1857, the Court of Exchequer

Jury cannot in-
quire into the
right.

(*y*) These words are directory only, and enable the company, or the claimant, at the meeting, to call upon the sheriff to keep the evidence distinct, and to require the jury to find a separate sum in respect of each claim. *Corrigal v. London and Blackwall R. Co.*, 5 Man. & G. 249; *Re London and Greenwich R. Co.*, 2 Ad. & E. 678; 1 Harr. & W. 81; 4 Nev. & Man. 450; *R. v. Sheffield R. Co.*, 11 A. & E. 194; *Bradshaw's Arbitration*, 12 Q. B. 562; 17 L. J. (Q. B.) 362.

(*z*) *Re Ware*, 9 Exch. 401. When compensation is assessed under a statute, which requires to ascertain the amount of compensation to be paid for lands, and in respect of other damage separately, it is the duty of the company, and not of the claimant, to see that the verdict and judgment is properly drawn up. *Re London and Greenwich R. Co.*, ubi supra.

(*a*) In *Taylor v. Clemson*, 2 Q. B. 1028, Maule, J., suggested that an inquisition, like a conviction, may be drawn up at any

time. The inquisition should be signed in the name of the sheriff, although the inquiry be held before the under-sheriff. *Stroud v. Watts*, 3 D. & L. 799; 15 L. J. (C. P.) 196; *R. v. Perkin*, 7 Q. B. 165. Where a railway company relied upon a verdict, whereby compensation was assessed for lands taken by them, in answer to an action of trespass; and it appeared that the inquisition had never been recorded, parol evidence was allowed to be given of the finding of the jury. *Manning v. Eastern Counties R. Co.*, 12 M. & W. 237.

(*b*) If the proceedings have been irregular, prohibition does not lie to prevent the verdict and judgment from being inrolled. The proper course is to quash them by certiorari. *Chabot v. Lord Morpeth*, 15 Q. B. 446; 19 L. J. (Q. B.) 377.

(*c*) 3 E. & B. 443. The judgments in this case contain an elaborate review of all the previous decisions, but they are too long for insertion here.

By a Jury.

decided *Chapman v. Monmouthshire R. Co.* (*d*) in accordance with the decision of the Queen's Bench, as indeed they were bound to do. But in the former case, Erle, C. J., expressed an opinion, that the jury had jurisdiction to try the *right* as incidental to the question of *amount* of compensation; and upon the trial of the latter case, Willes, J., stated that he adopted the views of Erle, C. J. In 1863, however, the Court of Queen's Bench upheld their previous decision (*e*). Until, therefore, the question can be carried to a Court of Error, it must be considered as settled for all practical purposes, that the jury have no power to inquire into the *right*.

But may award nil.

But although the judges in *R. v. L. and N. W. R. Co.* differed upon the above point, they all concurred in another point, viz., in approving of a former decision (*f*), in which it had been held, that, if the jury find the damage nominal or infinitesimally small, they may find the amount of compensation nil.

If the right to compensation is denied, the question must be tried in an action for the amount assessed upon a traverse of the right (*g*). But in such an action the quantum of damages cannot be disputed (*h*).

Nor can the sheriff and jury inquire whether the preliminary notices have been given.

And it seems also to be settled law (*i*), that the sheriff and jury have no right to inquire into the preliminary matters which precede the issuing of the warrant to the sheriff (*k*). The duty of the jury is to proceed to assess the value of, and the injury done to, the lands mentioned in the warrant, and if the warrant refers to lands which

(*d*) 27 L. J. (Exch.) 97; 2 H. & N. 277.

(*e*) *R. v. Metropolitan R. Co.*, 32 L. J. (Q. B.) 367; 8 L. T. (N. S.) 663; S. C., nomine *Horrocks v. Metropolitan R. Co.*, 4 B. & S. 315. See also *Barber v. Nottingham and Grantham R. Co.*, 33 L. J. (Q. B.) 193.

(*f*) *R. v. Lancaster and Preston R. Co.*, 6 Q. B. 759. See also *Bradby v. Southampton Local Board of Health*, 4 E. & B. 1014.

(*g*) *Chapman v. Monmouthshire R. Co.*, ubi supra; *Read v. Victoria Station and Pimlico R. Co.*, 32 L. J. (Exch.) 167; 1 H. & C. 826; *Barber v. Nottingham and Grantham Co.*, ubi supra. See also ante, p. 202.

(*h*) *Mortimer v. South Wales R. Co.*, 28 L. J. (Q. B.) 129; 1 E. & E. 375; *Barber v. Nottingham, &c. R. Co.*, ubi supra.

(*i*) *Taylor v. Clemson*, 2 Q. B. 999; 11 Cl. & F. 651, post, 306, where this point is more fully discussed.

(*k*) This rule will affect the right to begin, at the holding of the inquisition. In *Taylor v. Clemson*, 2 Q. B. 998, we find recorded the experience of two very learned and eminent advocates on this subject. "Lord Abinger, C. B.—I recollect a case in which this question arose. When Sir William Garrow, then attorney-general,

attended on behalf of some company, in a compensation case before the Recorder of London, he claimed to begin, on the ground that it lay upon the company to show jurisdiction, by proving a tender and refusal of compensation. I was counsel for the claimant, and opposed this, but unsuccessfully. But afterwards the same question arose, under one of the Bristol Dock Acts, on the Oxford circuit, before Thomson, C. B., who decided that the company had no right to begin, saying he had no jurisdiction to inquire into the matter, the act entitling the parties, if they pleased, to try the question before the judge instead of the sheriff. A motion was afterwards made for a new trial; but the Court of Queen's Bench confirmed the ruling of the Lord Chief Baron, saying that the other practice was improper, and that there was no jurisdiction to inquire into the preliminary matter. Another case of the same kind afterwards occurred before Le Blanc, J. He ruled in the same way; and the Court of Queen's Bench confirmed his ruling." Cresswell, who was counsel for the plaintiff in *Taylor v. Clemson*, stated that the same rule had been followed, on the taking of the inquisition, after argument on the other side by the counsel for the company.

the company have not duly treated for, in pursuance of the statutory directions, the inquisition will be a nullity, and no title to the lands can be conferred thereby (*l*).

By a Jury.

The compensation assessed in ordinary cases is in respect of the value of the lands purchased, taking into account the damage done by the severance, and the amount of all injury done or to be done to the lands held therewith, which is apparent and capable of being ascertained and estimated at the time when the compensation is awarded (*m*), but not in respect of contingent and possible damages which may arise afterwards, by the works of the railway, at other places, and which could not be foreseen by the arbitrators or jury (*n*).

Compensation is assessed only for damage capable of being ascertained at the time of the inquisition.

It is also worthy of remark at this place (although the subject is discussed hereafter) (*o*), that when proceedings were first taken under sect. 68, Lord Cottenham, C., restrained the claimant by injunction, in a case (*p*) where the right to recover the compensation appeared to him to be doubtful, and he directed the claimant to bring an action against the company, who were to make certain admissions, so that the legal right to receive compensation might be determined, and this rule was followed by Lord Langdale, M.R., in *Sutton Harbour Improvement Co. v. Hitchins* (*q*); but Lord Truro, C. (*r*), Lord Cranworth, V.C. (*s*), and Sir G. Turner, V.C. (*t*), subsequently declined to issue injunctions, although the facts brought before them were very similar to those in the case first referred to (*u*). In one of these cases Lord Cranworth said:—

Although the claimant's right to demand compensation be doubtful, injunction does not lie.

"The argument on the present motion has led me to consider more attentively the principle of Lord Cottenham's decision. I must confess the most profound respect for all that proceeded from that very eminent judge, yet I cannot say that I feel convinced by his reasoning. It may be that the alteration introduced into the laws, by enabling a party claiming compensation to get rid of the mandamus, was an unwise change, still it was the act of the legislature. A course of proceeding is chalked out, whereby a party, alleging that he has suffered an infringement of a legal right, is enabled, in a particular mode of legal proceeding, to obtain legal redress. He cannot get that redress without establishing his title to compensation and the amount of damage he has sustained; and the legislature, having pointed out the steps by which he is to arrive at the result, what right has this Court to say to a party affected by no equity whatever, 'You shall not proceed to assert your legal rights in the mode prescribed by law?' I can discover neither principle nor authority for such interference."

(*l*) *Ostler v. Cooke*, 13 Q. B. 143, post, 308.

(*m*) Ante, 262.

(*n*) *Lawrence v. Great Northern R. Co.*, 20 L. J. (Q. B.) 293; 16 Q. B. 643; ante, 246; *Lee v. Milner*, 2 M. & W. 824; ante, 239; *Croft v. L. and N. W. R. Co.*, 32 L. J. (Q. B.) 113. When the costs and expenses incurred by the claimant cannot be taken into account, see *Re Laws*, 1 Exch. 441; or the cost of accommodation works, post.

(*o*) Post, tit. "Injunction."

(*p*) *L. and N. W. R. Co. v. Smith*, 19 L. J. (Ch.) 193; ante, 224.

(*q*) 20 L. J. (Ch.) 489.

(*r*) *East and West India Dock Co. v. Gatlke*, 20 L. J. (Ch.) 217; ante, 222.

(*s*) *South Staffordshire R. Co. v. Hall*, 20 L. J. (Ch.) 397; ante, 222; and see ante, 201.

(*t*) *Duke of Norfolk v. Tennant*, 16 Jur. 398; ante, 243.

(*u*) See the comments on these cases in *R. v. L. and N. W. R. Co.*, 3 E. & B. 443.

By a Jury.

It has already been pointed out, that where the proceedings are under sect. 68, the company are not required to give ten days' notice of their intention to summon a jury (*x*).

The form of the inquisition.

With respect to the form of the inquisition, it has been said, that, inasmuch as there is to be an extraordinary jurisdiction exercised by the sheriff, everything which is made preliminary by the act of Parliament ought to be set out on the face of the inquisition (*y*). But recent decisions have not supported this doctrine.

Taylor v. Clemson.

This question, as to the necessity of showing jurisdiction on the inquisition, was discussed at great length in *Taylor v. Clemson* in the Exchequer Chamber (*z*); and all the authorities on the subject will there be found collected and arranged in admirable order. The Court, in delivering the judgment, said:—

“The authority given by the statute to the railway company, to take the lands of individuals for the purposes of the act, where it is exercised adversely, and not by consent, is undoubtedly an authority to be carried into effect by means unknown to the common law. And it is, therefore, contended, on the part of the plaintiff, that the same rule will apply to these proceedings which is held to apply to all other inferior jurisdictions, that, unless sufficient appears upon the face of the proceedings themselves to show that the jurisdiction exists, such proceedings are altogether void. Admitting such to be the rule of law, and not further relying on the special finding by the jury, that all which was necessary to give jurisdiction under the statute did really and in fact take place, than to observe that the whole objection is confined to the face of the proceedings themselves, the question is, whether, either expressly or by necessary intendment, the proceedings do of themselves show that they were warranted by the statute. And we are of opinion that, upon fair and necessary intendment, the jurisdiction appears upon the proceedings themselves.”

The Exchequer Chamber accordingly decided, that, when the warrant to the sheriff was annexed to the inquisition, they might be considered as one entire proceeding; and any deficiency existing in one document might be aided by reference to the other; and that, inasmuch as no particular form was prescribed by the statute, it was sufficient if the jurisdiction substantially appeared upon the face of the documents, or might be inferred therefrom (*a*).

Judgment of the House of Lords in *Taylor v. Clemson*.

But when this case was taken to the House of Lords (*b*), the arguments took a wider range, and two principal objections were urged against the validity of the inquisition, i. e. first, that it did not appear

(*x*) Ante, 198; but quære whether it may not be prudent to give this notice (see ante, 199, note (*d*)), particularly if the company wish to make an offer for the purposes of the costs of the inquiry, see post.

(*y*) Per Lord Wensleydale, in *Doe d. Payne v. Bristol and Exeter R. Co.*, 6 M. & W. 339. See also *R. v. Bagshaw*, 7 T. R. 363; *R. v. Mayor of Liverpool*, 4 Burr. 2244;

R. v. Trustees of Norwich Roads, 5 A. & E. 563; S. C., 1 N. & P. 32; *R. v. South Holland Drainage*, 8 A. & E. 429; *R. v. Croke*, 1 Cowp. 26; *R. v. Manning*, 1 Burr. 377.

(*z*) *Taylor v. Clemson*, 2 Q. B. 978; S. C., 2 Gale & D. 346.

(*a*) Ibid.

(*b*) *Taylor v. Clemson*, 11 Cl. & Fin. 610.

on the warrant, or inquisition, that the parties had disagreed as to the sum to be paid as compensation; and, secondly, that it nowhere appeared that notice of the proceedings before the jury had been previously given, in pursuance of the statute, and that consequently no jurisdiction whatever appeared. These objections were both overruled by the House of Lords, and Lord Cottenham's judgment clearly expresses the grounds of this important decision.

The form of the Inquisition.

Lord Cottenham's judgment in *Taylor v. Clemson*.

His lordship said:—

"If the arguments of the plaintiff be well founded, the railway company acquired no title to the lands in question; and that, not from any omission of what the act required them to do for the purpose of acquiring a title, but from a defect in the form of the inquisition by which the value of the lands was assessed. If the objection be fatal to the title of the company to these lands, there can be no doubt but that similar objections will be found to apply to very many titles derived under the various acts of Parliament which have, of late years, been in operation for the carrying on of public works.

"The special verdict finds, that everything was done which the act required for the protection of the owner of the property: the question, therefore, is purely one of form, which, if successful, would be destructive of the real merits of the case. This (although no reason for departing from any established rule) may properly be taken into consideration, if the case do not fall within the principle of decided authorities.

"The first objection to the title of the company is, that the inquisition, ascertaining the amount of the purchase-money, does not show that there was any authority under the act for such proceeding; that is, that it does not allege that the parties had not previously agreed upon such amount: for the absence of an agreement for that purpose was all that the act required to justify the warrant, and to give jurisdiction to the sheriff and jury. Now the warrant, which was referred to, and annexed to the inquisition, required the sheriff to impanel and swear a jury for the purpose of inquiring, assessing, and giving a verdict for the sum of money to be paid; and by the inquisition, taken in pursuance of this warrant, the jury find, assess and give their verdict for a sum of money to be paid for the purchase of the premises, by the said act of Parliament authorized to be taken by the said company; and the sheriff thereupon pronounces and gives judgment for such purchase-money, according to the directions of the act. It certainly does not, in terms, negative the fact of the parties having previously agreed upon the amount of the purchase-money, but it states that which is utterly inconsistent with any such fact. If the amount of the purchase-money had been previously agreed upon, the jury could not have assessed, and the sheriff could not have adjudged, the amount of such purchase-money. Whatever form might have been gone through, the amount of purchase-money would have been that which had been adjudicated upon. It will not be found, upon an examination of the cases, that any inquisition has been held defective for not alleging a fact necessarily implied from those which are alleged; and if that be so, there cannot be any ground for doing so for the first time in the present instance. This was the ground upon which the judges in the Exchequer Chamber held the proceeding to be free from objection upon this point, and which was before them, and now is sufficient to dispose of the first objection raised. Had this not been so, it would have been proper to consider whether it can be necessary, in any case, that there should be, on the proceedings, averments of facts into which the parties had no authority to inquire; and of which, therefore, they could have no judicial knowledge."

*The form of the
Inquisition.*

Lord Cottenham's
judgment in
*Taylor v. Clem-
son.*

Lord Cottenham then described the effect of the decided cases (many of which are cited, ante, p. 306, note (y)) and proceeded as follows:—

“I have now examined all the cases which have been relied upon on either side, and the result appears to be, 1st. That if it be necessary that the inquisition should state the absence of an agreement between the parties, what appears upon the present inquisition was in *R. v. Swansea Harbour* (c), decided to be sufficient, and in *R. v. Croke* (d) was assumed to be so, from the objection not having been taken; 2nd. That, except in what fell from Lord Mansfield in the latter case, and from Lord Denman in *R. v. Committeemen of the South Holland Drainage* (e), there does not appear to be any authority for holding that the inquisition or other proceeding need state any matter not cognizable by the authority whence such proceedings emanate, and all reasoning appears to be against any such rule. The instances referred to by Lord Abinger (f), in the Court below, prove that such preliminary matters were not cognizable by the sheriff and jury, and could not be the subject of proof before them. How, then, can it be necessary or proper that their inquisition should state facts, of which they could not have received any proof, particularly when, by the 138th section of the act, and the authority of *Baston v. Carew* (g), such statement would have been conclusive.

“A second objection was raised in argument in this House, which I do not see noticed in the report of the case before the Exchequer Chamber, and that is, the want of any statement as to notice of the proceeding before the jury, as required by the 138th section. This, if not removed by the observations before made, will be answered by the case of *Doe d. Payne v. Bristol R. Co.* (h), which decided, that what was made necessary by way of proviso in the act need not be alleged in the proceeding; but the want of it was to be brought forward by the objecting party. The affidavits show that no such case exists in point of fact.”

Ostler v. Cooke.

The warrant and inquisition held good, although they did not recite the previous proceedings.

This case was followed by *Ostler v. Cooke* (i). There, commissioners under a drainage act, containing compulsory powers for taking lands similar to those in the Lands Clauses Consolidation Act, caused a notice to be given to the landowner, which duly stated the particulars of the land required, but the warrant, subsequently issued to the sheriff, requiring him to summon a jury, merely described the land as “three acres, twelve roods and twenty perches of land in the parish of B.,” which were required for the purposes of the act, without referring to the notice previously given in pursuance of the acts; and in the inquisition, the money was awarded “for the purchase of three acres, twelve roods and twenty perches of land,” following the description of the land contained in the warrant. An action of trespass was brought to try the validity of this inquisition, and it was objected that the warrant and inquisition ought to have referred to the notice to treat, or at all events to have given the description and particulars of the land required, otherwise the warrant might apply to any land of the claimant, within the district. The Court,

(c) 8 A. & E. 439.

(d) 1 Cowp. 26.

(e) 8 A. & E. 429.

(f) 2 Q. B. 999.

(g) 3 B. & C. 649.

(h) 6 M. & W. 320, ante, 306.

(i) 13 Q. B. 143; 18 L. J. (Q. B.) 185; 13 Jur. 583.

however, held that the proceedings were not irregular, and said, that by the act the jury were only to inquire into the amount of the compensation to be awarded for the land required, and the judgment was for the money awarded, and not for the land. If the commissioners should give evidence of the value of other land than that mentioned and described in their notice, the proceeding would be void, and they would have no power to enter upon any land of the plaintiff. The Court observed, that there was no question as to the identity of the land, as evidence of value was given on both sides, and there was a view; and neither by the terms of the act nor by any general rule of law was it necessary that the notice should be referred to, or any particular description of the land given in the warrant, to give jurisdiction to the sheriff and the jury. The Court added, "The case of *Taylor v. Clemson*, in the Exchequer Chamber, and afterwards in the House of Lords, was cited on both sides, upon the argument, but the judgments in that case, and particularly that in the House of Lords, appear to us to be in accordance with our view of the present case." A writ of error was afterwards brought in the Exchequer Chamber, but that court affirmed the judgment in the court below, in the following terms (*k*):—

"The question is, whether the warrant and inquisition ought to have contained, on their faces, a particular description of the lands which were valued by the jury. It certainly would have been more convenient if they had so particularized them, but the proceedings are not void because they have not done so. The effect of the inquisition is not to make a parliamentary conveyance of the lands, but only to estimate the amount to be paid by the commissioners, before they make an entry on the premises required by the notice; and, as soon as that amount is tendered to the landowner, the commissioners are at liberty to enter on the lands. If no title be made out to the land, the amount of compensation may be deposited in the Bank, under the section in the act. If evidence had been given before the jury, as to any other land than that to which the notice applied, the inquisition would have been irregular, and might have been set aside. But here the notice given to the plaintiff by the defendants described the precise quantity of the land they required, with all requisite particularity, and no question was made as to the identity of the land."

But, notwithstanding these decisions, it may perhaps be at least unobjectionable to show, on the face of the proceedings, a description of the lands taken, and that the proper notices were given by the parties upon whose application the warrant to the sheriff was issued (*l*).

The cases also show that it is no objection, that it does not appear, on the inquisition, that the whole of the capital had been

*The form of the
Inquisition.*
Ostler v. Cooke.

(*k*) *Ostler v. Cooke*, 22 L. J. (Q. B.) 71; 18 Q. B. 831.

(*l*) See *supra*; also the form of the inquisition, post, App. tit. *Forms*. If the party who demands the compensation ori-

ginates the proceeding under 8 & 9 Vict. c. 18, s. 68, post, App. 55 (see ante, 197), it will be easy to adapt the form to the facts of such a case.

*The form of the
Inquisition.*

subscribed for, although, by the terms of the statute, the compulsory powers to take lands could not be resorted to until such a subscription was made (*m*). Nor need it appear that a certificate of two justices had been obtained, to certify that an erroneous description of lands in the book of reference proceeded from mistake (*n*). Nor need it appear who is to pay the costs of the inquiry (*o*). These decisions are in accordance with the doctrine which was subsequently laid down in the cases already referred to.

When certiorari
lies to remove
inquisition.

It lies if the she-
riff and jury act
beyond their
jurisdiction.

*R. v. Bristol and
Exeter R. Co.*

We may now proceed to inquire what remedies exist, in cases where the proceedings before the sheriff and jury have been erroneous, or objectionable to either of the parties interested in the inquiry.

The act provides, that "no proceeding shall be quashed or vacated for want of form, or be removed, by certiorari or otherwise, into any of the superior courts" (*p*). But although the certiorari is thus taken away (*q*), the courts will interfere, if it clearly appears that the proceeding has related to some matter, over which the sheriff had no jurisdiction whatever; or if the proceeding itself is impeached as being invalid, on the ground of malversation (*r*), or that the sheriff was interested (*s*). The case of *R. v. Bristol and Exeter R. Co.* (*t*) may appear, at first sight, to break in upon this rule. There a certiorari was applied for to quash an inquisition, and one of the objections relied upon was, that the lands, taken by a railway company, and for which the jury were summoned to assess compensation, were situate more than one hundred yards beyond the line of deviation. It was contended, in support of the writ, that, although the certiorari was taken away by the special act, yet, as the proceedings were altogether illegal, and there was a total want of jurisdiction, the certiorari would lie. On the other hand, it was contended, that, if the proceedings were merely null, the certiorari was unnecessary, and the parties entering would be liable in trespass.

(*m*) *Doe d. Payne v. Bristol and Exeter R. Co.*, 6 Mee. & W. 320; S. C., 2 Railw. C. 75.

(*n*) *Taylor v. Clemson*, 2 Q. B. 978; S. C., 2 Gale & D. 346.

(*o*) Post, 320, note (*i*).

(*p*) 8 & 9 Vict. c. 18, s. 145, post, App. 71; 8 & 9 Vict. c. 20, s. 156, post, App. A writ of certiorari always lies at common law to remove judicial proceedings. *R. v. Aberdare Canal Co.*, 19 L. J. (Q. B.) 251; 14 Q. B. 854.

(*q*) It has been decided that this clause is applicable to inquisitions. *R. v. Sheffield R. Co.*, 11 A. & E. 194. See also *R. v. Justices of Lindsey*, 14 L. J. (M. C.) 151; 3 D. & L. 101; 13 Q. B. 484.

(*r*) *R. v. Justices of West Riding of York*,

5 T. R. 629; *R. v. Sheffield R. Co.*, 11 A. & E. 194; *R. v. Cheltenham Commissioners*, 1 Q. B. 467; *R. v. Aberdare Canal Co.*, ubi supra; *South Wales R. Co. v. Richards*, 18 L. J. (Q. B.) 310; 13 Q. B. 988, post, 311; *Jubb v. Hull Dock Co.*, 9 Q. B. 443, ante, 252; *Penny v. South Eastern R. Co.*, 26 L. J. (Q. B.) 225, in which Lord Campbell, C. J., said, "It is impossible to maintain that, although the certiorari is taken away, if it is made out by affidavit that there has been a clear excess of jurisdiction on the part of the under-sheriff, the certiorari ought not to go."

(*s*) *R. v. L. and N. W. R. Co.*, 9 L. T. (N. S.) 423.

(*t*) 11 A. & E. 202, n.; 2 Railw. C. 99.

The Court of Queen's Bench refused to grant the certiorari; and it appears that the learned judges adopted the argument urged by the counsel for the defendants. Littledale, J., observes:—

Certiorari to remove Inquisition.

R. v. Bristol and Exeter R. Co.

"The parties applying are not without remedy, for they may bring trespass, if the proceedings are void. It is argued that there will be a *prima facie* justification, if the proceedings be not quashed. I doubt whether that would be so in any case; but clearly it would not be so where there has been a deviation from the line laid down."

It therefore appears that a writ of certiorari was refused, on the ground that the party had a sufficient remedy by action, although it was assumed that the affidavits showed that the sheriff had no jurisdiction to assess compensation for the lands which were taken for the purposes of the railway (*u*). But, in the subsequent case of *R. v. Sheffield and Manchester R. Co.* (*x*), the court took occasion to repeat the general proposition, that, whenever a want of jurisdiction appeared, it was competent for the Court of Queen's Bench to interfere by certiorari, although the writ be taken away by the express words of the statute. Lord Denman, C. J., said:—

R. v. Sheffield and Manchester R. Co.

"The fair import of *R. v. Bristol and Exeter R. Co.* is, that where the act done is locally and visibly out of the jurisdiction, it is then the act of a stranger; and we cannot consider it in any court at all, but leave the party to their remedy by an action of trespass; as, if an inquisition were held in Bedfordshire, to assess the value of lands in another county; but this is something sought to be shown without the jurisdiction, by extrinsic evidence, and that, too, where there is a clause in the act which, by enacting that it shall be a record, makes the sheriff's return alone evidence; and therefore a wrong-doer would be protected, if he could induce the sheriff to make a false return" (*y*).

And Patteson and Coleridge, Js., without going to the extent of overruling *R. v. Bristol and Exeter R. Co.*, intimated that it was not necessary to justify everything that might have been said by the court in that case.

In another case (*z*) a landowner, whose lands had been taken and severed by the line of a railway, made a claim for compensation, which was to be assessed by a jury "in respect of the purchase of the land,—for damage to other lands by the severance of the purchased land from them,—and for injuriously affecting such other

South Wales R. Co. v. Richards.

(*u*) The party whose lands were taken afterwards brought ejectment against the company. But the Court of Exchequer decided that the special act authorized the company to make such a deviation as included the lands in question. See *Doe d. Payne v. Bristol and Exeter R. Co.*, 6 M. & W. 320; 2 Railw. C. 75; post, 363. It was not suggested by the counsel for the defendants that the inquisition was a bar to the action.

(*x*) 1 Railw. C. 537; 11 A. & E. 194.

(*y*) See post, 315.

(*z*) *South Wales R. Co. v. Richards*, 18 L. J. (Q. B.) 310; 13 Q. B. 988; 13 Jur. 1095. The court intimated that, by the consent of the claimant, the verdict might be allowed to stand for the sums properly awarded in respect of the unobjectionable claims. See also *Jubb v. Hull Dock Co.*, 9 Q. B. 443, ante, 252; *Penny v. South Eastern R. Co.*, 26 L. J. (Q. B.) 252; 7 E. & B. 660; ante, 242.

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lands by the execution of the railway and works." It appeared that the line of the railway, when made, would cross an occupation road leading from the claimant's residence to the high road, and as the occupation road was crossed on a level, the claimant required that a bridge should be thrown over the railway, whilst the company contended that a level crossing was sufficient, and no definite agreement as to the communication had been arrived at, previously to the hearing of the case before the jury. Under these circumstances it was urged for the claimant, that the jury should allow for the expenses of providing a bridge, but the company alleged that the jury ought not to take the matter into their consideration at all, because the subject of communication was a matter left, by the acts, entirely for the decision of justices of the peace (a). The under-sheriff adopted the latter view of the case, but the jury delivered their verdict, whereby they gave several sums: first, for the value of the land purchased and compulsory possession; secondly, for severance at thirty years' purchase; thirdly, for loss of water; and, lastly, 450*l.* for "severance, owing to the crossing and expense incurred thereby."

The company thereupon obtained a writ of certiorari to quash the inquisition, on the ground that the jury had no right to entertain the question, in respect of which they had given the 450*l.*; and the Court of Queen's Bench decided that there was a clear excess of jurisdiction, in a substantial matter, and the inquisition was quashed. The court said:—

"This rule cannot be made absolute unless it distinctly appears that, in the proceedings, the sheriff and jury have taken upon themselves to decide on a matter over which they had no jurisdiction. Where that is made out, the statutory prohibition does not apply, and the inherent jurisdiction of this court is unrestrained; nor need the excess of jurisdiction in the court below appear in every part of its proceeding, for it cannot give validity to one act, in itself beyond the power of the court, because it has, at the same time, done another which it was competent to do."

It may, therefore, now be assumed, that the rule applicable to the removal of inquisitions is that which has been already laid down. The application of that rule is, however, not unattended with difficulties. In the case last mentioned, it is said—"There is a great disposition to evade clauses in acts of Parliament which take away the certiorari on the alleged excess of jurisdiction; and we feel bound not to yield to attempts of this kind, unless they rest on very clear and satisfactory grounds" (b). And a very learned judge (c) has observed, "There is a perpetual endeavour to get rid of clauses which take away certiorari, by impugning the jurisdiction. Such attempts we

(a) Post, 380.

(b) 18 L. J. (Q. B.) 312.

(c) Patteson, J., in *R. v. Cheltenham Commissioners*, 1 Q. B. 478.

ought carefully to watch, otherwise the clauses would be rendered nugatory." And the Court of Queen's Bench, acting on this principle, have decided, that where an inquisition had been taken before a clerk to the under-sheriff, and an assessor appointed, *pro hac vice*, by the sheriff, they not being persons specially named in the act, there was no ground for granting a certiorari (*d*), inasmuch as this deviation from the requisites of the act was a mere irregularity, and not an excess of jurisdiction. And where the certiorari was taken away, and the company issued a warrant to the sheriff, requiring him to assess compensation to the claimant "for damages (if any) which shall have been done by reason of the execution of the works," it was contended that the warrant was void, and that therefore the jurisdiction never attached; but the court refused a certiorari, as the warrant (though it ought not to have contained the words "if any") gave jurisdiction (*e*).

Certiorari to remove Inquisition.

But not for mere irregularity.

A party who seeks to set aside an inquisition must come into Court with clean hands, for he may so conduct himself as to be held incompetent to take an objection to the inquisition, which would be perfectly good under ordinary circumstances. This rule has been applied in a case where a party treated land as his own freehold, when a negotiation for purchase was going on; and he was held to be incompetent to set up as an objection, that the lands belonged to his wife, and were copyhold, and that the inquisition awarded no compensation to the parties who held these interests in the land. He was also held to be estopped from objecting, that, by the inquisition, the company were directed to commit a trespass, by making a hedge on other land belonging to the complainant, it not being positively stated in the affidavit that less compensation had been given to him in consequence; and it appearing, that, when he demanded compensation, he had required a certain sum to be given to him, and also made it a condition that the company should erect the fence in question (*f*).

Parties may be estopped from taking objections.

The writ of certiorari is not therefore taken away in all cases, but the objections, which may be raised to the proceedings before the sheriff, are limited to cases where it appears that the proceeding relates to some matter over which the sheriff had no jurisdiction, or unless the proceeding itself is impeached, as being invalid on the ground of malversation.

(*d*) *R. v. Sheffield R. Co.*, 11 A. & E. 194; 1 Railw. C. 537. See also *Corrigal v. London and Blackwall R. Co.*, 5 Man. & G. 247.

(*e*) *R. v. Lancaster and Preston Junction R. Co.*, 6 Q. B. 759; 14 L. J. (Q. B.) 84. This decision was approved of by all the

judges in *R. v. L. and N. W. R. Co.*, 3 E. & B. 443. See *Bradby v. Southampton Local Board of Health*, 4 E. & B. 1014.

(*f*) *R. v. Committee of South Holland Drainage*, 8 A. & E. 429.

Certiorari to remove Inquisition.

Objections to issuing the certiorari are available on a motion to quash the inquisition when brought up (*g*).

Mode of proceeding to obtain writ of certiorari.

We shall now proceed to describe the mode of proceeding to obtain a writ of certiorari (*h*). And, first, the statutory regulations, limiting a time for issuing writs of certiorari, and requiring notice to be given of applications for them, and recognizance to be entered into before allowance, do not apply to inquisitions or other proceedings before sheriffs (*i*).

Affidavits.

It is extremely important that the affidavits should be carefully prepared (*k*). If any important fact be stated in uncertain language, the Court will refuse the writ. And any failure of this kind is the more serious in its results, in consequence of a rule of practice, which, if not universal and inflexible, is as nearly so as possible, *i.e.*, that the Court will not allow a party to make a second application for the writ, if he has previously applied to the Court upon insufficient affidavits (*l*).

Defects in proceedings should be clearly stated in the affidavit.

It will, therefore, be proper that all defects in the proceedings should be positively sworn to, and, if possible, a copy of the inquisition should be annexed; or, if that cannot be procured, the party making the affidavit should swear directly to his information and belief, as to its contents.

Thus in *R. v. Manchester and Leeds R. Co.* (*m*), a party sought to set aside an inquisition on the ground that some of the lands taken by the company, and for which damages were given by the inquisition, were not included in the schedule annexed to the railway act, neither had two justices certified that the omission proceeded from mistake, and that, consequently, the company had no right to take the land; and the application was founded on an affidavit made by the owner of the lands. The Court refused the application for a certiorari, in

(*g*) *R. v. Hatfield Peverel*, 14 Q. B. 298.

(*h*) See also ante, 281, note (*x*). It seems that the rule to show cause why the writ should not issue may be directed to the company, although the inquisition be out of their custody. *R. v. Manchester and Leeds R. Co.*, 1 Per. & Dav. 164; but see S. C., 8 A. & E. 424, note (*a*).

(*i*) See 5 Geo. 2, c. 19, s. 2; 13 Geo. 2, c. 18, s. 5.

(*k*) The affidavits in support of the application for the writ must be intituled "In the Queen's Bench" only, and sworn in court before a judge or commissioner for taking affidavits in the Queen's Bench. The certiorari is directed to the parties

taking the inquisition, adapted to the particular case, and describing the inquisition as in the rule of the court, and is to be issued as other writs on the Crown side. *Corner's Practice*, 91.

(*l*) *Bodfield v. Padmore*, 5 A. & E. 785, n. (*a*); *R. v. Manchester and Leeds R. Co.*, 8 A. & E. 413; *R. v. Pickles*, 3 Q. B. 599, n. (*a*); *R. v. Great Western R. Co.*, 1 D. & L. 874; *Tilt v. Dickson*, 4 C. B. 736, where Lord Truro said, "The strict practice has been relaxed in cases where the first application has failed in consequence of a clerical error, or from the affidavits having been incorrectly intituled."

(*m*) 8 A. & E. 413.

consequence of the defective mode of stating the objections to the inquisition. Lord Denman, C. J., said:—

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“We should issue the certiorari, if it distinctly appeared that the jury had comprehended in their verdict anything which they were not authorized to include. But we cannot assume that the fact is so, unless the affidavits positively state it. They should either set out the inquisition, or show that the deponent has no copy, and then distinctly state that he is informed of, and believes, the facts raising the objection. Here all that appears as to the inquisition is, that the party ‘objects’ that certain deficiencies exist. It is said that this is an objection upon oath; but suppose he had actually said, ‘I object upon oath,’ that would merely be a solemn form of stating the objection. Then, as to the authority of the company to take the lands, and of the jury to assess the value. This should be distinctly negatived. Here all that is positively sworn to is the description in the books of reference, which is alleged to be insufficient, and the statement by the applicant in his protest, that the lands were not properly described in the act or schedule. It should be shown positively that the justices have not certified; for their certificate would give the power. To assert, generally, that it is not the fact that the statute authorizes the proceeding, is not enough; it should be stated how it fails to do so. I disclaim the principle, that we are to issue a certiorari to bring up the inquisition, on the ground that there may probably be defects; we must clearly see that facts do exist which will bring the defects before us.”

Lastly, it is important to remember that any defect or want of jurisdiction may be shown by affidavit (*n*).

The importance of the subject we have been discussing seems to justify a few further observations on the effect of the language which is found in the Lands Clauses Consolidation Act, which, by sect. 50, directs, that—

The effect of the inquisition and verdict.

8 & 9 Vict. c. 18.

“The sheriff, before whom such inquiry shall be held, shall give judgment for Sect. 50. the purchase-money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands, or any part thereof, shall be situate, in respect of which such purchase-money or compensation shall have been awarded, *and such verdicts and judgments shall be deemed records*; and the same, or true copies thereof, shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence; which copies or extracts the clerk of the peace is hereby required to make out and to sign, and certify the same to be true copies.”

It is believed that no case has yet arisen in which the full effect and meaning of this section have been considered. But in the following cases, which all occurred *previously* to the passing of the Lands

(*n*) See the cases already mentioned, ante, 311, and *R. v. Bolton*, 1 Q. B. 66; 10 L. J. (M. C.) 49; *Penny v. South-Eastern*

R. Co., 26 L. J. (Q. B.) 225; 7 E. & B. 660; ante, 242.

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Clauses Act (*o*), the judges appear to have felt considerable difficulty in putting a construction upon statutes which contained similar provisions (*p*).

*R. v. Nottingham
Old Waterworks
Co.*

In an early case (*q*), an application was made to compel a company, by mandamus, to pay the amount of compensation, where the verdict and judgment had been duly enrolled at the sessions; and it was contended that the remedy was on the record, and that a writ of mandamus was therefore inapplicable. Patteson, J., observes:—

“If there be a specific remedy for this sum we cannot grant the mandamus. Now, the court of quarter sessions is to give judgment for the sum assessed by the jury, which judgment is to be conclusive; and the clerk of the peace is to sign the verdicts and judgments, which are to be registered and to become records. It seemed to me, at first, that, if these were judgments of record, they might be enforced like judgments of other Courts, by the process of the Court itself, if it had any process proper for the purpose, and, if not, by action of debt. But, on looking to the act, I doubt whether such a consequence can be admitted. These are not the ordinary records of the quarter sessions; and I have never heard of an action on a record of this sort.”

*R. v. Manchester
and Leeds R. Co.*

And the same learned judge, in a subsequent case (*r*), said:—

“As to what fell from me during the argument in the present case, respecting the effect of the inquisition, considered as a judgment, I merely wished to inquire whether, if it have the effect of a judgment of a court of record, error would not lie, and a certiorari be excluded. But I think that, in fact, this cannot be considered as a judgment. The section is drawn very loosely; but it does not, as far as I can understand it, give these proceedings an effect analogous to that of judgments of a court of record.”

*R. v. Trustees
of Swansea Har-
bour.*

So Littledale, J., says in another case (*s*):—

“It is said, that, because this inquisition is to be kept among the records of the quarter sessions, it ought, as the record of an inferior Court, to set forth everything which was necessary to give jurisdiction. But the enactment is merely directory, that the judgment, having been given, shall be kept among the records of sessions; and, as to the judgment itself nothing is prescribed, except that the jury shall ascertain the sum to be paid for purchase or recompense, and the justices shall accordingly give judgment for such purchase-money or recompense so to be assessed.”

(*o*) The act having passed *after* the cases presently mentioned, it may very well be that the framers of 8 & 9 Vict. c. 18, knowing the difficulties which had arisen in those cases, advisedly omitted the words “to all intents and purposes,” in hopes of avoiding similiar difficulties.

(*p*) By some of the earlier statutes no conveyance appears to have been necessary to vest land in a company, after the compensation was assessed, and the inquisition recorded with the clerk of the peace. See *Bruce v. Willis*, 11 A. & E. 463. By other statutes, the conveyances of the lands were

required to be enrolled at the sessions; *R. v. Leeds and Liverpool Canal Co.*, *ibid.* 316; but under the provisions of the 8 & 9 Vict. c. 18, the legal title of the company to the lands taken under the compulsory powers does not seem to be complete, until a conveyance has been executed. See *post*, 345.

(*q*) *R. v. Nottingham Old Waterworks Co.*, 6 A. & E. 365; *ante*, 217.

(*r*) *R. v. Manchester and Leeds R. Co.*, 8 A. & E. 428.

(*s*) *R. v. Trustees of Swansea Harbour*, 8 A. & E. 448; S. C., 1 Per. & D. 512.

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It therefore appears that the enrolment of the verdicts and judgments with the clerk of the peace does not clothe them with the character of records for all purposes.

In a subsequent case it was, however, said by Lord Denman, C. J., and Patteson, J., that the effect of the record of the inquisition and judgment would be to operate as a conclusive bar in any action which might be brought to recover the lands (*t*).

It will be observed that in all the foregoing cases the special act provided that the verdict and judgment "should be binding and conclusive to all intents and purposes;" and that when deposited with the clerk of the peace, they should be deemed records "to all intents and purposes whatsoever." As these words are omitted in 8 & 9 Vict. c. 18, a strong inference seems to arise, that the legislature did not intend that the verdicts and judgments, when enrolled, should of themselves be binding or conclusive, or that they are to be deemed records in the ordinary sense of the term; and it may be contended, that the language used in this statute will be sufficiently carried into effect, if it be construed to mean that the verdict and judgment, when enrolled, shall be deemed the record of the proceedings which actually took place before the sheriff (*u*). And it would seem that one main object of sect. 50 was to facilitate the proof of what took place before the sheriff and jury (*x*).

Having thus endeavoured to point out what defects in the inquisition may still be taken advantage of by certiorari, and the mode of applying for the writ, and the effect of the verdict when enrolled, we shall turn to another important branch of our inquiry.

It may happen that the proceedings taken on the inquisition before the sheriff are strictly regular in form and substance, and yet, through the perverseness or mistake of jurymen, or some other similar miscarriage, gross injustice may be done, in deciding the question of compensation submitted to the jury. In such a case, it is evident that a writ of certiorari will not lie to remove the inquisition, inasmuch as the writ is expressly taken away by the statute, and there is no want of jurisdiction, or any malversation on the part of the presiding officer (*y*).

No new trial can
be obtained,

(*t*) *R. v. Sheffield R. Co.*, 11 A. & E. 194; also *Chabot v. Lord Morpeth*, 15 Q. B. 449. But see the dictum of Littleton, J., in *R. v. Bristol and Exeter R. Co.*, 11 A. & E. 204. It is also worthy of remark, that in *Doe d. Payne v. Bristol and Exeter R. Co.*, 6 Mee. & W. 320, the counsel for the defendants did not contend that the inquisition was final; and in *Corrigal v. London and Blackwall R. Co.*, 5 Man. & G. 219, the counsel for the plaintiff did not appear to have relied upon the demurrer to the fourth plea,

on the ground that no proof except the record could be given.

(*u*) See ante, 309. It will be seen that the statute requires a conveyance to be made to perfect the title of the company to lands taken under the compulsory powers of the act. See post, 348, n. (*u*).

(*x*) See Phillips on Evidence, 9th ed. 131, and observe that the documentary evidence act, 8 & 9 Vict. c. 113, was passed three months after the Lands Clauses Act.

(*y*) See ante, 310.

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*R. v. Eastern
Counties R. Co.*

Is, then, the party aggrieved without any remedy? Upon this important question, *R. v. Eastern Counties R. Co.* (z) seems to be in point. That was an application for a mandamus commanding the defendants to issue a precept to the sheriff, to summon a jury to assess damages to F. It appeared that F. was tenant from year to year of premises near Chelmsford; that the fee simple of a portion of those lands was purchased for the purpose of constructing the railway thereon; and that the company also temporarily used a portion of the remainder of the land, by passing to and fro, with carts, &c., as they were empowered to do under the special act. F. having claimed compensation, a precept was issued by the company to the sheriff, to empanel a jury "to assess satisfaction, recompense, or compensation, for damage before that time done and sustained by the claimant in and about the lands now or formerly in his occupation, &c., by reason of the execution of any of the works by the said acts authorized, at, upon, or near to the said lands, or for the future, temporary or perpetual, or for any recurring damage to be done to, or sustained by him as aforesaid." At the trial, F. proposed to give evidence of damage done to growing crops, by the construction of the railway; and also of damage done by the temporary user of a portion of his land; and he offered evidence to show that a temporary road had been made over his meadow, destroying the pasturage, but that the meadow had, in other respects, always remained under his control. The under-sheriff, however, rejected this evidence, upon the ground, that, by the act, authority was given to justices to award damages in respect of the temporary occupation of any land. It was urged that this provision was not applicable, as there had not been a temporary occupation, but a mere user of the land; but the presiding judge withdrew this branch of the case from the consideration of the jury. A further objection was raised that the verdict was against evidence. F. had originally claimed 524*l.*; by his witnesses he proved damage to the amount of 411*l.* The company, by their witnesses, showed that the damage was 152*l.* 10*s.*; but the jury awarded only 49*l.*

Upon these facts it was contended, that, if the Court saw that obvious injustice had been done, it would not hesitate to put a party in a position to maintain his rights, but Coleridge J., said:—

"This was an application for a rule, calling upon the company to show cause why a writ of mandamus should not issue, commanding them to issue a precept to the sheriff to summon a jury, to assess damages for injury alleged to have been sustained by reason of the works of the railway. It appeared that such a precept had already issued, and that a jury had sat under it, to assess damages in respect of all the causes of damage for which compensation is now sought to be obtained, and that they returned a verdict for 49*l.* It is said that this is a sum grossly under the amount which the party is entitled to claim; that he proved damage to the amount

(z) 2 Dowl. N. S. 945; 12 L. J. (Q. B.) 271; 3 Railw. C. 466.

of nearly 500*l.*, and the insufficiency of the verdict is attributed to two causes: one, that the sheriff excluded one entire set of damages from the consideration of the jury, on the ground that they were properly recoverable under a particular section of the company's act before a justice; another, that, although the claimant proved a much larger amount of damage than that found, the jury, from some personal cause, chose to give a verdict for an inadequate amount. It was admitted, that a direct motion for a new trial could not be made, and no doubt that was a proper admission, for the proceeding is the creature of the act of Parliament; and the section of the act, by which it is directed that such a proceeding shall be had, makes the verdict final; but, even if this be not so, I am at a loss to see what machinery this Court has to direct a new trial. But it was said that the Court might direct a second precept to issue. It appears to me, however, that if I acceded to such a proposition, I should only be doing a thing indirectly, which cannot be done directly. If a mandamus should go, the return would be that a precept has been already issued, and the only answer to such a return would be 'Yes; but justice has not been done under that precept;' so that, in point of fact, it would still come to the same thing, that the Court would be called upon to grant a new trial. I am informed that a like application has been made in the full Court in another case, and that it was refused. I do not know whether injustice has been done or not; but even if it has, I have no power to interfere, and no rule, therefore, can go in this case" (a).

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And in delivering judgment in *R. v. L. and N. W. R. Co.* (b), it was observed by the Court, that—

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"It must be admitted that even for a preliminary and inconclusive trial, a sheriff's jury are an unsatisfactory tribunal, and their decision additionally objectionable because no error in the direction given to them, nor any mistake or even perverseness in their finding, can be reviewed as in a trial at Nisi Prius."

It seems to be a peculiar anomaly, that a new trial may be had to correct any miscarriage which may occur in trials at Nisi Prius, where the judges of the superior courts preside, whilst the very important questions which arise in compensation cases are subject to no further inquiry or supervision, provided the sheriff had jurisdiction to enter upon the inquiry, and there was no malversation on the part of the presiding officer.

We will now suppose that the question as to the amount of the compensation has been finally decided, the title to the lands perfected (c), and that nothing remains but to recover the compensation from the company. We therefore proceed to consider what remedies may be resorted to, by the party entitled to receive the money awarded by the verdict of the jury, and the costs attending the inquiry.

Remedies to recover money awarded as compensation.

This question was very much discussed in the courts of law, when

(a) See *Re Stroud*, 8 C. B. 502, where the question was discussed but not decided as to the power of the Court to interfere with

the award of an umpire under sect. 27.

(b) 3 E. & B. 475.

(c) Post, tit. "Title to Lands."

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recover Money
awarded as
Compensation.*

it first became necessary to provide a remedy to recover compensation, under some of the earlier special railway acts. Some of these acts were altogether silent as to the mode in which the money awarded should be recovered. In other instances it was enacted, as has been already shown (*d*), that the inquisition, verdict and judgment should be enrolled by the clerk of the peace, and should be deemed records to all intents and purposes. The question soon arose, whether the proper mode of recovering money awarded as compensation was by action of debt—on the case—or debt upon the statute, or by an action of debt as upon a judgment of record,—or whether the only remedy was by indictment. All these modes of proceeding were suggested in an early case, as an answer to an application made for a mandamus to compel a company to pay a sum of money awarded as compensation. The Court of Queen's Bench, without determining that one or more of the before-mentioned remedies might not exist, determined, that, in the absence of any other clear remedy, they ought to issue a mandamus; and this was the mode of proceeding usually adopted to enforce the payment of compensation-money (*e*).

Action to recover
compensation
awarded by jury.

But the Courts having afterwards decided that an action of debt (*f*) may be brought on an inquisition and verdict, this proceeding has superseded the old remedy by mandamus. In such an action the plaintiff may recover not only the amount assessed for compensation, but also the costs attending the inquiry, if he is entitled to them, and they have been taxed (*g*). A more summary remedy is, however, provided by the statute to obtain the costs, by the following sections.

Costs of inquisition.

By sect. 51, on every such inquiry before a jury (*h*) where the verdict of the jury shall be given for a *greater* sum than the sum (*i*)

(*d*) Ante, 316.

(*e*) *R. v. Nottingham Old Waterworks Co.*, 6 A. & E. 355; *R. v. Trustees of Swansea Harbour*, 8 A. & E. 439; *R. v. Deptford Pier Co.*, 8 A. & E. 910; *R. v. Great Western R. Co.*, 6 Q. B. 72, n. (*d*).

(*f*) *Corrigal v. London and Blackwall R. Co.*, 5 Man. & G. 219; *R. v. Hull and Selby R. Co.*, 6 Q. B. 70; *Williams v. Jones*, 13 M. & W. 628; *East and West India Dock Co. v. Gattke*, 3 Macn. & G. 173, ante, 222.

(*g*) *South-Eastern R. Co. v. Richardson*, 15 C. B. 810; *Chapman v. Monmouthshire R. Co.*, 2 H. & N. 267; 27 L. J. (Exch.) 97; *Mortimer v. South Wales R. Co.*, 28 L. J. (Q. B.) 129; 1 E. & B. 375; *Fletcher v. Great Western R. Co.*, 28 L. J. (Exch.) 147.

(*h*) These words include an inquiry before a jury instituted under sect. 68, and the claimant under that section is consequently entitled to his costs, if the jury give a larger sum than the company have previously offered. *South-Eastern R. Co. v. Richardson*, in error, 15 C. B. 810; 20 L. J. (C. P.) 122, affirming S. C. below, 11 C. B. 154; 20 L. J. (C. P.) 236, see ante, 199.

(*i*) Semble, that this refers to the sum offered previously to the ten days' notice of the time and place of holding the inquiry under sect. 46. *Ross v. York, Newcastle and Berwick R. Co.*, 18 L. J. (Q. B.) 199; 5 Railw. C. 516; 5 D. & L. 695; *Metropolitan R. Co. v. Turnham*, 32 L. J. (M. C.) 249; 14 C. B. (N. S.) 212; *Hayward v. Metropolitan R. Co.*, 33 L. J. (Q. B.) 73. The inquisition need not show on its face by whom the costs are to be paid. Where a company were liable to pay costs to be recoverable before a justice, if the same sum or a larger sum than that previously offered were awarded to the party whose lands were taken, Williams, J., observed on this point, "It is suggested that the inquisition ought to show the facts which ascertained the liability to costs, but it is obvious that that is not so, because the costs are not a matter for the consideration of the jury: they are recovered by a proceeding quite independent of the inquiry, and there is no reason that anything respecting them should appear by the inquisition." *R. v. Trustees of Swansea Harbour*, 8 A & E. 439. See also

previously offered by the promoters of the undertaking, all the costs of such inquiry (*k*) shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same, or a less sum than the sum previously offered (*l*) by the promoters of the undertaking, or if the owner of the land shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling and returning the jury, and of taking the inquiry (*m*), and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking; and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

By sect. 52, the costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's

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8 & 9 Vict. c. 18,
s. 51, App. 53.

Costs to be set-
tled by the
master.

the same point considered as to awards, ante, 294. Quære, whether the statute ought to have provided for the payment of the claimant's costs, in cases where the company have not previously made any offer of compensation. The company may perhaps altogether refuse to recognize a claim for compensation, and the claimant would then be entitled to require the company to issue a warrant under sect. 68 (post, App.; and see ante, 193). But in such a case it seems not to be incumbent on the company to make an offer of a certain sum for compensation, because it has been ruled that sect. 38 does not apply to cases falling under sect. 68, see ante, 199. In *South-Eastern R. Co. v. Richardson*, 21 L. J. (C. P.) 122, Alderson, B., seemed to be of opinion that if no offer was made, the verdict of the jury must be taken to be given for a greater sum than that previously offered. But in delivering the judgment of the Court of Exchequer Chamber, it is said, "It is not necessary for us to say what the decision would have been if no offer had been made by the company." See also *Maher v. Southern and Western R. Co.*, 13 Ir. L. R. 364. It is quite clear that the power to recover such costs must be given by the statute expressly. In *Corrigal v. London and Blackwall R. Co.*, 5 M. & G. 219, it was decided that a claimant was not entitled to the costs of an inquiry, because the act had only provided for three classes of cases, neither of which included the claimant's case. See also *R. v. Same Co.*, 4 Railw. C. 119; *Martin v. Leicester Waterworks Co.*, 27 L. J. (Exch.) 432.

(*k*) This means all the costs of such an inquiry as defined by sect. 52. *Bray v. South-Eastern R. Co.*, 19 L. J. (Q. B.) 11; 7 D. & L. 307. It has been held under a special act, which gave "all the costs of the inquest," that those words meant all costs whatever, like the case of a trial where one party obtains a verdict. *R. v. Justices of York*, 1 A. & E. 828; 3 N. & M. 625;

R. v. Gardner, 6 A. & E. 112; 1 N. & P. 308; *R. v. Sheriff of Warwickshire*, 2 Railw. C. 661. In the two last cases, the words were narrower than those in the Lands Clauses Act, and the party was held not entitled to the general costs. Where the sheriff improperly refused to proceed on an inquiry, and the claimant afterwards obtained a mandamus, the company cannot be required to pay costs incurred in making the application against the sheriff. *R. v. Sheriff of Middlesex*, 5 Q. B. 365; 3 Railw. C. 396. In *Re Hammersmith Rentcharge*, 4 Exch. 87; 7 D. & L. 41; 19 L. J. (Exch.) 357; it was held (Parke, B., dissentiente), under 6 & 7 Will. 4, c. 71, s. 82, which gives "costs of the inquisition," to the owner of a rentcharge, who is compelled to levy it by such a proceeding, that the owner was entitled to the costs of opposing a rule subsequently discharged which had been taken out by the tenant to set aside the order to hold the inquisition.

(*l*) Where a claimant, under sect. 68, claims one sum as compensation for premises having been injuriously affected, and another for loss of business, and the promoters offer one sum for the injurious affection, and another for the loss of business; and the jury gives the same aggregate amount, but apportion the sums differently, the claimant cannot get the costs of the inquiry. *Hay v. Metropolitan R. Co.*, 33 L. J. (Q. B.) 73.

(*m*) Where the same amount as the company previously offered is given, the company are not entitled to any costs incurred upon the summoning and impanelling of the jury, nor, as costs "of taking the inquiry," to half their costs of counsel, attorney or witnesses. The intention of the legislature is to divide, between the parties, merely the formal costs of the proceedings, and to leave each party to bear his own costs, other than those. *Bray v. South-Eastern R. Co.*, 19 L. J. (Q. B.) 11.

*Remedies to
recover Money
awarded as
Compensation.*

8 & 9 Vict. c. 18,
s. 52, App. 54.

Costs recoverable
by distress.

Bench of England or Ireland, according as the lands are situate, on the application of either party (*n*), and such costs shall include all reasonable costs, charges and expenses incurred in summoning, impannelling and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

By sect. 53, if any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress (*o*), and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands, or of any interest therein, the same may be deducted and retained by the promoters of the undertaking out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provisions hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction for the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

(*n*) The Master has no jurisdiction to tax costs incidental to railway inquiry as between solicitor and client, but only as between party and party. *O'Farrell v. Limerick and Waterford R. Co.*, 13 Ir. L. R. 365. It would seem to be the better opinion that the Courts have authority to review the taxation, or to order the Master to reconsider his determination. *Metropolitan R. Co. v. Turnham*, 32 L. J. (M. C.) 249; 8 L. T. (N. S.) 280. But see *Ross v. York, New-*

castle and Berwick R. Co., 18 L. J. (Q. B.) 199; 13 Jur. 610; 5 Railw. C. 516; 5 D. & L. 695; *Bray v. South-Eastern R. Co.*, 7 D. & L. 307; *Ex parte Scully*, 11 Ir. L. R. 292.

(*o*) A mandamus will not be granted to recover costs, where a remedy by distress is given by the statute. *R. v. London and Blackwall R. Co.*, 3 D. & L. 404; 4 Railw. C. 119; *R. v. Hull and Selby R. Co.*, 6 Q. B. 70.

CHAPTER VII.

ON THE INVESTMENT OR PAYMENT OF PURCHASE-MONEY AND COMPENSATION: ON THE TITLE TO LANDS PURCHASED (a): AND ON INTERESTS OMITTED TO BE PURCHASED.

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I. *The Investment or Payment of Purchase-money and Compensation.*

ALTHOUGH, as it has been shown (b), the Lands Clauses Consolidation Act enables tenants for life, and other persons under various disabilities, to sell and convey lands to a railway company, such parties are not entitled to take the purchase-money or compensation awarded or to be paid for the purchase of such lands, or for permanent damage thereto, for their own use, but it must be in such and some other cases invested for the benefit of the parties interested in the lands. The following are the provisions of the statute with respect to purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title.

If the purchase-money or compensation payable in respect of any lands, or any interest therein, purchased or taken by the company from any corporation, tenant for life or in tail, married woman (c) seised in her own right and entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same, except under the provisions of the Railway Acts, or the compensation paid for any permanent damage to any such lands amount to or exceed the sum of 200*l.*, the same shall be paid into the Bank of England or Ireland, as the

8 & 9 Vict. c. 18,
s. 7, App. 47.

In certain cases
purchase-money
to be invested,
sect. 69.

(a) When the lands are in Ireland, see 14 & 15 Vict. c. 70; 23 & 24 Vict. c. 97, post, Appendix.

(b) Ante, 170.

(c) When property is sold under the

compulsory powers of this act, that part of the rule of Hil. T. 4 Will. 4, which directs inquiry to be made of a married woman, whether any provision is made for her, is inapplicable. *Re Foster*, 7 C. B. 120.

8 & 9 Vict. c. 18,
s. 69, App. 56.

Purposes to which
purchase-money
may be applied.

case may be, in the manner particularly prescribed, and the monies remain so deposited, until the same be applied (*d*) to some one or more (*e*) of the following purposes; that is to say,—

1. In the purchase or redemption of the land-tax (*f*), or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith (*g*) to the same or the like uses, trusts, or purposes: or,

2. In the purchase of other lands (*h*) to be conveyed, limited and settled upon the like uses, trusts and purposes, and in the same manner as the lands, in respect of which such money shall have been paid, stood settled (*i*): or,

(*d*) As to the costs of such application, see post, p. 332, sect. 80.

(*e*) At the option of the claimant. *Re De Beauvoir's Trusts*, 29 L. J. (Ch.) 567.

(*f*) Where an act of Parliament authorized a company to purchase lands of tenants for life, &c., and directed that the purchase-money should be applied in redemption of land-tax upon other parts of the property unsold, it was decided that a tenant for life, who had redeemed the land-tax before the act, might reimburse himself out of the proceeds of the lands purchased of him by the company. *Ex parte Northwick*, 1 Y. & Coll. 166.

(*g*) If the lands of a municipal corporation are taken, the purchase-money may be devoted to payment of mortgage monies secured on other lands belonging to the same corporation. *Ex parte Corporation of Cambridge*, 5 Railw. C. 204; 6 Hare, 30; 12 Jur. 450. But although the money deposited may be laid out in the discharge of mortgages affecting other settled lands, Shadwell, V.C., was of opinion, under a statute similar to the above, that the company are not liable for costs consequent on paying off mortgages. *Ex parte Earl of Hardwicke*, 17 L. J. (Ch.) 422; 12 Jur. 508; 1 De G., M. & G. 297. See post, p. 336, as to that case. Nor are the company liable to pay the mortgagee's costs of appearing to consent to such a petition. *Ex parte Yates*, 12 Jur. 279.

(*h*) K. Bruce, V.C., doubted, *In re Cann's Estate*, 19 L. J. (Ch.) 376; 15 Jur. 3, whether the Court was authorized to order deposited money, arising from the sale of freehold property, to be invested in a copyhold estate; but, upon a representation that the Master had found that it was for the benefit of all parties interested, that the purchase should be made, he made the order as prayed. But in a subsequent case, he expressed doubts if he had acted rightly in *Cann's case*. *Ex parte Macaulay*, 23 L. J. (Ch.) 815; 23 L. T. 263, in which case he refused to allow the purchase-money of freeholds to be invested in leaseholds. See *Re Liverpool Dock Acts*, 1 Sim. N. S. 202; and post, p. 335, note (*t*). In another case

the Lords Justices made an order for reinvestment in copyholds, where the greater part of the lands sold to the railway company was of a like tenure. *Re Browne*, 6 Railw. C. 733; 16 Jur. 158. Where lands forming part of a rectory had been purchased of a company and the money deposited, the rector presented a petition under sect. 69, praying that the fund in court might be applied to defray costs incurred in inclosing waste lands allotted to the rectory, under an inclosure act. Sir J. Romilly, M.R., on the authority of a case previously decided by Wigram, V.C., made the order. *Ex parte Lockwood*, 14 Beav. 158; and see *Re Duke of Marlborough*, 13 Jur. 738. The money will not be allowed to be invested in the purchase of an equity of redemption. *Ex parte Craven*, 17 L. J. (Ch.) 215, or on a mortgage, even for a temporary security. *Ex parte Franklin*, 1 De G. & S. 528.

(*i*) It has been decided under a special railway act, that, where money is in court to be laid out in lands to be settled "to the like uses," the Court will lend its aid to an advantageous purchase, beyond the amount of the money deposited, and will direct the extra costs to be paid out of the money in Court. *Ex parte Newton*, 4 Y. & Coll. 518; but see *Ex parte Tetley*, 4 Railw. C. 55; *Ex parte Madon*, id. 49; *Ex parte Vicar of Clarbrough*, 12 Jur. 239; and see as to the costs, post, 332. A small sum of money, directed to be laid out in lands, to be settled "to the like uses," was ordered to be applied in new buildings. *Ex parte Shaw*, 4 Y. & Coll. 506. In another case, in "lasting improvements." *Ex parte Barrett*, 19 L. J. (Ch.) 415; 15 Jur. 3. But Parker, V.C., said, the rule he laid down was, not to allow sums above 20*l.* to be so paid for new buildings or improvements: *In re Bateman*, 21 L. J. (Ch.) 691, and *Re Lord Egremont*, 12 Jur. 618. So where only 20*l.* 10*s.* remained, the Court refused to allow it to be devoted to the payment of the extra costs of the tenant for life. *Ex parte Rector of Bredicott*, 17 L. J. (Ch.) 414; 5 Railw. C. 209.

3. If such money shall be paid in respect of any buildings taken under the authority of the acts, or injured by the proximity of the works, or injured by the works, in removing or replacing such buildings, or substituting others in their stead (*k*), in such manner as the Court of Chancery shall direct: or,

Purposes to which purchase-money may be applied.

4. In payment to any party becoming absolutely entitled to such money (*l*).

By sect. 70, such money may be so applied, as aforesaid, upon an order of the Court of Chancery (*m*), made on the petition of the party

Court will order investment on petition.

(*k*) It has been repeatedly held, that purchase or compensation money may be laid out in building. Thus, where a company took land belonging to a charity on which almshouses were erected, and paid into Court the sum awarded as compensation for the land and rebuilding the almshouses, *Shadwell, V. C.*, ordered the money to be paid to the trustees of the charity, upon an undertaking to apply it in rebuilding the almshouses. *Ex parte Thorner's Charity*, 12 L. T. 266. Again, in *Re Buckinghamshire R. Co.*, 14 Jur. 1065, Lord Cranworth, V. C., authorized the application of purchase-money to the alteration and improvement of almshouses. And in another case, *Wood, V. C.*, upon the petition of the incumbent, ordered the purchase-money of glebe land belonging to a parsonage to be paid to the nominee of the archbishop, (under 1 & 2 Vict. c. 106, s. 66,) to be applied in building a vicarage house. *Ex parte Incumbent of Whitfield*, 2 Johns. & H. 610; 30 L. J. (Ch.) 816, post, p. 337. And in *Re Wight's Estates*, 6 Weekly Rep. 718, *Wood, V. C.*, also allowed a tenant for life to receive 220*l.* upon an undertaking to lay it out, with 80*l.* of her own, in building labourers' cottages upon the estate. So in the following case. A testator by will settled houses in London and Norwood upon certain trusts. The houses in Norwood were purchased by a railway company and the money paid into Court. Afterwards the houses in London were condemned by the commissioners under the Metropolitan Building Act, whereupon the tenant for life rebuilt them, and applied to the Master of the Rolls for an order for payment to her of the purchase-money for the Norwood houses, which was less than the cost of rebuilding the London houses. He refused the order, but upon appeal the Lords Justices made it. *Re Davies' Estate*, 27 L. J. (Ch.) 712; 3 De G. & Jo. 144. And where a railway passed through a farm and divided it, so that the buildings could not be conveniently used for one part of the farm, *Sir J. Romilly, M. R.*, held that compensation paid for damage might be applied in the erection of new buildings on that part of the farm which required them. *Ex parte Milward*,

29 L. J. (Ch.) 245; 27 Beav. 571. However, in *Re Rudyerd's Estates*, 6 Jur., N. S. 816, *Stuart, V. C.*, refused to make an order for the application of part of the purchase-money towards the erection of a new farmhouse and buildings upon an estate which had been purchased with other part of the purchase-money, saying it was not the purchase of other lands, and could not be considered as a debt or incumbrance.

(*l*) Where lands were sold by agreement to a company, by a dean and chapter and their lessee, for a long term of years, for one entire sum of 1,760*l.*, and the whole of the purchase-money was paid into the Bank by the company, and the lessee afterwards petitioned the Court to apportion and pay him his share of the purchase-money, *K. Bruce, V. C.*, said that he had too much doubt of the authority of the Court to apportion the money in such a case, to make it proper for him to be active in doing so, and he therefore refused to accede to the application. *Ex parte Ward*, 17 L. J. (Ch.) 249. (An order was afterwards taken by consent in this case, to the effect that the dividends should be paid to lessee for the residue of the term or until further order, without prejudice to any question, the lessee undertaking to pay the rent reserved by the lease.) Where by the terms of a special railway act the company were empowered to purchase lands belonging to the corporation of Lincoln, in which lands the freemen were interested, and the purchase-money was directed to be deposited and applied for the permanent benefit of the freemen, as the Court of Chancery should direct, *Parker, V. C.*, declined to entertain a petition as to the application of the fund, until a public meeting of the freemen should have been convened, and a committee appointed on their behalf, who could instruct counsel to appear. *Re Great Northern R. Co.*, 6 Railw. C. 738; 21 L. J. (Ch.) 621; 16 Jur. 756. When money is to be treated as real, and when as personal estate, post, p. 342, and see post, p. 329, note (*x*).

(*m*) Several points have been decided as to the practice of the Court in entertaining these petitions. The Court will direct a reference to the Master before a summary

Practice of the court upon petitions relating to money invested.

Court will order investments on petition.

who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited, and, until the money can be so applied, it may, upon the like order, be invested in the funds, or in government or real securities (*n*), and the interest, dividends and annual proceeds thereof paid to the party who would

order is made. Thus where an application was made by the parish officers to have a sum of money, which had been paid into Court by a railway company, paid out to them for the purpose of buying other land, and erecting other buildings, in substitution of those taken by the company; *K. Bruce*, V. C., directed a reference to the Master. *Ex parte Churchwardens of Bicester*, 5 Railw. C. 205. So, per Shadwell, V. C., *Ex parte Craven*, 17 L. J. (Ch.) 215; *Re Martin*, 22 L. J. (Ch.) 248; 17 Jur. 30. And it has been decided that the Court will not, by one order, direct a reference as to the propriety of a proposed reinvestment, and as to title, and for the completion of the purchase, by payments to the vendors, and for taxation and payment of costs. After the Master has approved of the title and settled the conveyance, the matter must come again to the Court for approval and further directions. *Ex parte Duckle*, 16 Jur. 511, explaining *Ex parte Metherell*, 16 Jur. 72; 20 L. J. (Ch.) 629, where a contrary rule is erroneously supposed to have been laid down. But in some cases such applications have been granted when supported by proper affidavits, showing that the title to the lands about to be purchased has been approved by counsel, and the deeds verified, without a reference to the Master. See *Ex parte Vicar of East Dereham*, 21 L. J. (Ch.) 677, by Kindersley, V. C. Where a rector, who had presented a petition for investment, died pending the proceedings and the new rector consenting that the proceedings should go on, Parker, V. C., held that no supplemental order was necessary. *Ex parte Rector of Lea*, 21 L. J. (Ch.) 776. But in Williams' Chancery Practice, p. 348, the practice of the Court is thus stated:—"The 56th section of the New Procedure Act, 15 & 16 Vict. c. 86, directs that on all sales under the decree or order of the Court, an abstract of the title shall be laid before one of the conveyancing counsel. The same course is also taken on the reinvestment in land of monies which have been paid into Court, under the Lands Clauses Consolidation Act, as the purchase-monies for lands taken by railway companies. The Court requires first to be satisfied by affidavit, that the purchase proposed to be made is a fit and proper investment of the fund, and, having been satisfied by the evidence on that point, directs a note to be taken by the registrar, that the Court approves of the proposed purchase, and the petition for the reinvest-

ment of the fund then stands over until the opinion of one of the conveyancing counsel, as to the title, is produced. No order of reference is drawn up. The particular conveyancing counsel, to whom the case is to go, is determined by a rota as settled by the General Order of the 16th of December, 1852, (see now Consolidated Orders, 1860, II.,) unless there is any special reason for deviating from that order of rotation. The fact of the approval of the title is required to be verified by affidavit, and upon that being done, the registrar takes a note that the Court is satisfied on the point of title, and the petition is ordered further to stand over that the conveyancing counsel may settle the draft conveyance. The Court will not make the order prospectively for payment of the money, on the purchase deed being settled by the conveyancing counsel, but the case must be mentioned again when the deed is prepared for execution. *In re Caddick's Settlement*, 9 Hare, App. p. ix.; *Ex parte Rector of South Collingham*, ib. p. xii. "The course on the reinvestment of monies which have been paid into court by a railway company, upon a compulsory taking of land is this. The proposed reinvestment having been sanctioned by the Court, and the title approved by the conveyancing counsel, an application is then made to the Court that the purchase-money may be paid out, upon the execution of the conveyance. The engrossment of the deed, as settled by the conveyancing counsel, duly verified by affidavit (9 Hare, lxxxv.), is then produced in Court, a blank being left for the insertion of the recital of the order of the Court, for the payment of the purchase-money. The order is then made—that upon completion of the engrossment by the insertion therein of a recital of the order of the Court, and upon due execution of the conveyance by all proper parties, verified by affidavit, the sum of £ be paid out to A. B. the vendor." *Re Caddick's Settlement*, 17 Jur. 84; 9 Hare, App. ix.; 22 L. J. (Ch.) 10. See also *Re Martin*, 22 L. J. (Ch.) 248.

(*n*) The Master having reported against the propriety of allowing money, as a general principle, to be invested on mortgage, *K. Bruce*, V. C., said, as he was doubtful on the point, he would not go against the decision of the Master. *Ex parte Franklyn*, 17 L. J. (Ch.) 166; 12 Jur. 642; 5 Railw. C. 206. In *Ex parte Craven*, 17 L. J. (Ch.) 215, Shadwell, V. C., refused a similar application.

for the time being have been entitled to the rents and profits of the lands (o).

When a tenant for life applies to the Court, upon petition, to have money re-invested in the purchase of other lands, in pursuance of the foregoing section, it is not necessary to serve notice of the petition upon the parties in remainder. Lord Cranworth, L. J., said on this subject:—

On a petition for re-investment, by tenant for life, notice need not be given to remainderman.

“Great difficulty might frequently occur where the parties in remainder are under disabilities. It would appear that the party intrusted to sell the property might be equally intrusted to select a proper re-investment, especially as such investment is required to be made with the sanction of the Master. I have inquired of the Registrar whether the practice has been to serve the cestuis que trust, and he says that it has not. When it appears therefore, as a matter of fact, that this practice has gone on for twenty years, and that no inconvenience has resulted from it, I am certainly not prepared to say that that practice should not be persevered in. Taking analogy and practice together, I think it inexpedient to interfere to change the course hitherto pursued in these matters.”

Sir K. Bruce, L. J., also said:—

“By way of security in cases of this description, there is the superintendence of the Master, the improbability of the tenant for life seeking to injure the inheritance, and, lastly, the presence of the railway company, which, if anything gross were done, and through supineness or collusion they should be held to have connived at it, they would probably be themselves treated upon the footing of trustees, and thus have to pay the money over again. For these reasons, I concur that the order may be made, as asked by this petition, without any service on the parties entitled in remainder under this will (p).”

(o) A railway company took some land which had been demised by a dean and chapter for twenty-one years on a beneficial lease. The company purchased the lessee's interest, and purchased the reversionary interest of the dean and chapter separately, and on a petition praying that this latter purchase-money might be invested, K. Bruce, V. C., directed the money to be invested in lands, and after providing for the payment of the rent reserved to the dean and chapter, if such a provision was necessary, he directed the remainder of the dividends to be accumulated, until the expiration of the twenty-one years, and added to the principal, and the order was taken in that form. *Ex parte Dean and Chapter of Gloucester*, 19 L. J. (Ch.) 400; 15 Jur. 239; and see *Ex parte Rector of Lambeth*, 4 Railw. C. 231. So where compensation was awarded to the bishop, in respect of the value of the reversion of church lands leased for lives, Sir G. Turner, V. C., ordered the money to be invested, and the dividends to be accumulated until either of the lives should die, inasmuch as the bishop for the time being was entitled to nothing, until the lease should become renewable. *Ex parte Bishop of Winchester*, 16 Jur. 648; and see *Ex parte Archbishop of Canterbury*, 2 De G. & S. 365. And where the lands

taken were, with other lands, subject to the payment of an annuity by the owner, and the purchase-money was duly deposited, but no conveyance of the lands to the company had been executed in consequence of a dispute as to who were necessary parties to join, K. Bruce, V. C., ordered the dividends to be paid to the owner of the lands, and directed the company to pay the costs of his petition. *Ex parte Cofield*, 11 Jur. 1071. But if the annuitants join with the owner in a petition, the dividends will be ordered to be paid to the former. *Re Lowndes*, 20 L. J. (Ch.) 422. When a portion of the corpus of the fund will be ordered to be sold, to pay an annuitant, see *Ex parte Wilkinson*, 3 De G. & S. 633. Where lands were taken which belonged to the trustees of charities, under the Municipal Corporation Act (5 & 6 Will. 4, c. 76), the purchase-money was ordered to be invested, and the payment of the dividends to be made to any two of the trustees for the time being. *Re Collin's Charity*, 20 L. J. (Ch.) 168.

When parties having precarious interests apply, the order for payment is moulded accordingly.

(p) *Ex parte Staples*, 1 De G., M. & G. 294; 21 L. J. (Ch.) 251; 16 Jur. 158; 6 Railw. C. 733. As to service on remaindermen and trustees where there is a suit, and their costs, see *Wilson v. Foster*, post, p. 341.

Nor to the company.

Nor is it necessary, when an application is made to re-invest money deposited, to give notice of the petition to the company who paid in the money (*q*). And in a case in which the company were improperly served with notice, on a petition to have the dividends paid to the husband of one of the parties interested, K. Bruce, V.C., ordered the petitioners to pay the costs incurred by the company (*r*).

Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.

8 & 9 Vict. c. 18, s. 71, App. 57.

Under 20*l.* to be paid to parties.

Sect. 72.

Sums exceeding 20*l.* payable under contract with persons not absolutely entitled, to be paid into Bank.

Sect. 73.

If the purchase-money or compensation exceed 20*l.*, and is less than 200*l.*, it may be either paid into the Bank, and applied for the above-mentioned purposes, or, with the approbation of the company, may be paid to two trustees nominated in the manner prescribed, to be by them applied to the same purposes. Any such sum, not exceeding 20*l.*, is payable to the parties who were entitled to the rents and profits of the land, for their own use; or in case of coverture, infancy, lunacy, or other incapacity of the parties, then for their use to their respective husbands, guardians, committees, or trustees.

And all sums of money exceeding 20*l.*, payable in respect of the taking, using or interfering with any lands, under a contract or agreement with any person not entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely, for his own benefit, shall be paid into the Bank, or to trustees in manner aforesaid (*s*); and it shall not be lawful for any contracting party, not entitled as aforesaid, to retain to his own use any portion of the sums so agreed or contracted to be paid, for or in respect of the taking, using or interfering with any such lands, or in lieu of bridges, tunnels or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands; but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: *Provided always*, that it shall be in the discretion of the Court of Chancery in England, or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance, which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works (*t*).

(*q*) *Ex parte Rector of Kirkby Overblow*, 19 L. J. (Ch.) 329, per Shadwell, V. C.

(*r*) *Ex parte Hordern*, 12 Jur. 846; 2 De G. & S. 263.

(*s*) Sect. 71, *supra*.

(*t*) Thus, where glebe lands had been

taken, 30*l.*, part of the purchase-money, were ordered to be paid to the rector, to pay for the necessary alterations in fences. *Ex parte Rector of Little Steeping*, 5 Railw. C. 207; and see *Re Duke of Marlborough*, 13 Jur. 738.

Where any purchase-money or compensation paid into the Bank, under the provisions of the acts, shall have been paid in respect of any lease, for a life or lives, or years, or for a life or lives and years, or any estate in lands less than the whole fee-simple thereof, or of any reversion (*u*) dependent on any such lease or estate, it shall be lawful for the said courts respectively, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid, in such manner as the Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion, in respect of which such money shall have been paid, or as near thereto as may be (*x*).

Court may direct application of money in respect of leases or reversions.

8 & 9 Vict. c. 18, s. 74, App. 57.

Upon deposit in the Bank in manner hereinbefore provided of the purchase-money or compensation agreed or awarded to be paid, in respect of any lands purchased or taken, the owner of such lands, including in such term all parties enabled by this act to sell or convey lands, shall, when required so to do by the company, duly convey such lands to the company, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the company, if they think fit, to execute a deed-poll under their common seal, containing a description of the lands, in respect of which such default shall be made, and reciting the purchase or taking thereof by the company, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed-poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the company of the lands described therein; and thereupon all the estate and interest in such lands, of or capable of being sold and conveyed by the party, between whom and the company such agreement shall have been come to, or as between whom and the company such purchase-money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as

Upon deposit being made, the owners of the lands to convey, or, in default, the lands to vest in the company, upon a deed-poll being executed by them.

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(*u*) See the cases where church lands have been taken, ante, pp. 325, note (*l*), 327, note (*o*).

(*x*) A testator, by his will, bequeathed a leasehold estate, determinable on his own life, and that of another person, to trustees, upon trust to one for life, with remainders over, and directed that his trustees should renew the lease by substituting another life for his own. A railway company took part of the estate, and the purchase-money was paid into Court and invested, and the dividends were ordered to be paid to the tenant for life. The trustees did not renew the lease, and the other life dropped. Stuart,

V. C., decided that the tenant for life was entitled to the principal of the stock in Court. His Honor said—"I am bound by the terms of the Lands Clauses Consolidation Act to give to the party entitled in possession, the same benefit in respect of this fund as she would have been entitled to, in case the sale had not been made, and the money had not come into Court. There can be no doubt what that interest would have been. The whole property would then have gone to the tenant for life, the lease having expired, and the remaindermen could have taken nothing." *Re Beaufoy's Trusts*, 22 L. J. (Ch.) 430.

8 & 9 Vict. c. 18,
s. 75, App. 58.

Where parties
refuse to convey,
or do not show
title, or cannot
be found, the
purchase-money
to be deposited.
Sect. 76.

aforesaid, shall vest absolutely in the company, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the company shall be entitled to immediate possession of such lands (*y*).

If the owner of any such lands purchased or taken by the company, or of any interest therein, on tender of the purchase-money or compensation, either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the company (*z*), or if he refuse to convey or release such lands, as directed by the company, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the company to deposit the purchase-money or compensation payable in respect of such lands, or any interest therein, in the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery in England, or the Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the company can do), subject to the control and disposition of the said Court.

Upon deposit
being made, a re-
ceipt to be given,
and the lands to
vest upon a deed-
poll being exe-
cuted.

Sect. 77.

Upon any such deposit of money as last aforesaid being made, the cashier of the Bank shall give to the company, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the company, if they think fit, to execute a deed-poll under their common seal, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under

(*y*) Where reversions have been outstanding and unpurchased, see the cases, ante, pp. 257, 316, note (*p*).

(*z*) Where a railway act empowered a company to summon a jury in cases where the owner of lands failed to disclose his title, and, an owner having failed to comply with the act in this particular, a jury was summoned, and the amount of compensation assessed, whereupon the company, without calling upon the owner to produce his title, paid the amount of the compensation into the Bank, in pursuance of a clause in the railway act, similar in its terms to the above, and took possession of the lands; it was held by the Court of Exchequer, that the company were not authorized to take this step. Lord Cranworth observed—"It is clear that the object of this act was to

enable the parties, claiming compensation for their lands, to make out their title, after the jury had assessed the amount of that compensation. Here an offer was made by the company, which the plaintiff treats as a nullity; on which the company, who want the land for their works, apply to a jury to assess the compensation, and it is assessed accordingly. Now, after that was done, they were bound to call on him to show his title; and until they do so, they have no right to take possession of his land by paying the amount of the compensation money into Chancery. Neither the letter nor the spirit of the act bears out such a construction, and it would be most unjust if it did." *Doe v. Manchester, Bury and Rossendale R. Co.*, 14 M. & W. 687; 9 Jur. 949; 15 L. J. (Exch.) 208; 2 Car. & Kir. 162.

which, and the names of the parties to whose credit such deposit shall have been made, and such deed-poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the company of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use, and in respect whereof such purchase-money or compensation shall have been deposited, shall vest absolutely in the company, and as against such parties they shall be entitled to immediate possession of such lands.

8 & 9 Vict. c. 18,
s. 77, App. 58.

Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England, or the Court of Exchequer in Ireland, may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof(a), according to the respective estates, titles or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such Court shall seem fit(b).

Application of
monies so depo-
sited.

Sect. 78.

(a) Applications for payment of dividends are now made in chambers. Cons. Ord. 1860, xxxv. 1.

(b) In an early case, *Ex parte Grainge*, 3 Y. & Col. 62, where money had been deposited in consequence of a defect in the title to the lands, which being removed, a petition was presented, praying that the money might be paid over to the petitioner, the affidavit stated that the petitioner was not aware of any right in any other person, or of any claim made by any other person to the money so paid into the Bank, or to the land: Alderson, B., observed, that there were great objections to such an application as the present, as it was obvious that the party applying for the money might have a very limited interest in the lands. He, however, would consider himself bound by the decisions of other judges, and would therefore examine the orders which had been made in the cases cited, and deliver his opinion on a future day. But, on a subsequent day, his lordship said, that he had examined the orders made by former judges, and that, upon the authority of those orders, he felt himself bound to accede to the application. A similar application was afterwards made, *In re Birmingham and Gloucester R. Act*, 3 Y. & C. 66 n. (b), there being no other evidence of the title of the lands than the applicant's affidavit. Upon that occasion, the same learned judge said, "I am bound by the authorities, though I do not comprehend them. The party may sell to the company lands in strict settlement, and then apply for the money out of court.

However, the order must be made." And see *Ex parte Shears*, 2 Y. & J. 493. And if it appears to the Court of Equity, when a petition is presented, that there is a dispute respecting the title of the petitioner, it seems to be the practice to direct an issue to determine the question. *Ex parte Issauchaud*, 3 Y. & Coll. 721. As to whether an incumbrancer may apply by petition under the above statute, see *Ex parte Back*, 2 Y. & Jer. 386. Since the foregoing cases were decided, the following order has been issued in Chancery. Consol. Ord. 1860, xxxiv. 3.—"In the case of petitions under acts of Parliament, authorizing the sale of property for public purposes, where the purchase-money is directed by any such act of Parliament to be paid into Court, the petitioners claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum of £ — in the said petition mentioned, or to any part thereof; or if the petitioners are aware of any such right or claim, they must, in such affidavit, state or refer to and except the same." But it seems that this order is only applicable to petitions for payment of capital or principal, and does not apply to applications for payment of dividends to tenants for life or others. *Re Baroness Braye*, 22 L. J. (Ch.) 285; 9 Hare, App. vii.; *Ex parte Hollick*, 16 L. J. (Ch.) 71; 4 Railw. C. 498, contra. A railway company took possession of land under their

Parties in possession to be treated as owners of lands.

8 & 9 Vict. c. 18, s. 79, App. 58.

If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the Court (c); and, unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

II. *Costs attending the Investment of Monies.*

8 & 9 Vict. c. 18, s. 80, App. 58.

The Lands Clauses Act contains an important provision, which requires the company to pay all the costs relating to the investment of monies paid into the Bank, and the subsequent proceedings relating thereto.

Costs in cases of money deposited.

By sect. 80, in all cases of monies deposited in the Bank under the provisions of that or the special act, or an act incorporated therewith (d), (except where such monies shall have been so deposited by reason of the wilful refusal (e) of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party

compulsory powers, but previously to the payment of the price, they entered into an agreement for purchase with persons who alleged that they had a good title, and that they could convey free from incumbrances, and the consideration money was fixed at an entire sum for the whole. It afterwards appearing that the alleged owners of the whole could only make out their title to a part, the company paid the entire sum into Court, under sect. 69; this sum was apportioned, and the value of the land, to which a good title could be made, was stated by affidavit. The vendors then presented a petition, praying that the sum apportioned to them might be carried over to a separate account, and that the dividends might be paid to the tenant for life. *Stuart, V. C.*, ordered the sum apportioned as the value of that part of the land to which a good title could be made to be carried over to the account of the petitioners, and the dividends to be paid to them, the principal not to be paid out without notice to the company. *Re Perkes*, 7 Railw. C. 605. Where a railway company took real property vested in trustees for married women and children, the Court declined to direct

the fund to be paid to the trustees, but ordered it to be invested in the ordinary way. *Re Horwood's Estate*, 3 Giff. 218.

(c) This section seems to be intended only as a direction to the Court of Equity, how it should act in any case in which it should be unable to arrive at a satisfactory conclusion as to the parties entitled to receive the money; but if the court directs an issue at law, it would be a misdirection, if the jury were directed to the provisions of this section, as confirmatory of the title of the parties in possession of the land. Per *Kindersley, V. C.*: *Freemen of Sunderland v. Bishop of Durham*, 16 Jur. 370; S. C., 21 L. J. (Ch.) 145.

(d) *Re Ellison*, 25 L. J. (Ch.) 379; 8 De Gex, M. & G. 62.

(e) A refusal founded upon an opinion of counsel that the party was not bound to convey the land, is not a wilful refusal; it must be a refusal arising from mere will or caprice, and not the exercise of reason. *Ex parte Bradshaw*, 16 Sim. 174; 12 Jur. 888; *Re Windsor, Staines and South-Western R. Co.*, 12 Beav. 522; *Ex parte Railstone*, 15 Jur. 1028; *Ex parte Dashwood*, 26 L. J. (Ch.) 299.

to make out a good title to the land required) (*f*), it shall be lawful for the Court of Chancery in England, or the Court of Exchequer in Ireland, to order the costs of *the following matters*, including therein all reasonable charges and expenses incident thereto, to be paid by the company, that is to say, the costs of the *purchase or taking* of the lands, or which shall have been incurred in consequence thereof (*g*), other than such costs as are herein otherwise provided for (*h*), and the costs of the *investment* of such monies in government or real securities (*i*), and of the *re-investment* thereof in the *purchase of other lands* (*k*), and *also the costs* of obtaining the proper orders for any of

Costs in Cases of Money deposited.

8 & 9 Vict. c. 18,
s. 80, App. 58.

(*f*) See ante, 330.

(*g*) The costs occasioned by a reference to the master, as to the propriety of a sale of part of a lunatic's estate to a company, were ordered to be paid by the company under this section. *Re Taylor*, 1 Macn. & G. 210. And also the costs of the heir at law of a lunatic, appearing before the master. *Re Walker*, 15 Jur. 161; 20 L. J. (Ch.) 474; *Picard v. Mitchell*, 12 Beav. 486. So on a sale of lands by the devisees in trust of a testator, whose estate is in the course of administration in a suit, the company are liable to pay the costs of a petition for transferring the purchase-money from the account of the railway act to that of the suit. *Dinning v. Henderson*, De G. & S. 485. See observations on this and the cases above mentioned in *Haynes v. Barton*, post, p. 338. The company are liable to pay the costs of preparing and verifying the execution of a power of attorney, by parties entitled to the fund residing in Jersey. *Ex parte Great Southern and Western R. Co.*, 10 Ir. Eq. Rep. 222.

(*h*) What are costs "otherwise provided for" within this section, see ante, 191, note (*z*). Where, by an act, the costs of "contracts, sales and conveyances" should be borne by the purchasers: held that the vendors were entitled to the costs of making out the title. *Ex parte Feoffees of Addie's Charity*, 3 Hare, 22; 3 Railw. C. 119. When the company are not liable to the costs of paying off a mortgage, see ante, 324, note (*g*).

(*i*) Brokers' commission on the purchase of stock is a part of the costs of investment, which must be borne by the company. *Ex parte Corporation of Trinity House*, 3 Hare, 95. The Court now orders the investment of stock to be made without deducting brokerage, and directs the company to pay the amount of the brokerage to the petitioner, with the other costs. *Re Braithwaite*, 22 L. J. (Ch.) 915; *Re Buckinghamshire R. Co.*, W. R. 1853—4, p. 2. In some of the earlier special acts, the costs of interim investment were not provided for. *Ex parte Hirst*, 4 Y. & Coll. 468; *Ex parte Taylor*, 1 Y. & Coll. 229; *Ex parte Cooke*, 3 Railw. C. 137. But where the Court had power to order the expenses "of all pur-

chases" made in pursuance of the act, it was decided that the costs of investment were included. *Ex parte Bishop of Durham*, 3 Y. & Coll. 690. See also *Ex parte Onslow*, 1 Y. & Coll. 553; *Ex parte Northwick*, 1 Y. & Coll. 166; *Ex parte Trafford*, 2 Y. & Coll. 522; *Ex parte Gardiner*, 3 Railw. C. 117; *Re Great Western R. Co.*, 1 Phillips, 560; *Ex parte Cresswell*, 10 Jur. 86. But see *Ex parte Molyneux*, 2 Coll. 273, and *Ex parte Thornton*, 17 L. J. (Ch.) 167; 12 Jur. 130. These cases are, however, comparatively obsolete, as the terms of the special acts differ materially from the above section of the Lands Clauses Act. Where the clauses in a former act, as to the re-investing of purchase-mones and the payment of the expenses of such re-investment, were held to be applicable, mutatis mutandis, to a subsequent act, see *Ex parte Chetwode*, 18 L. J. (Ch.) 418; *Re Lords of the Treasury*, 1 My. & C. 676; *Ex parte Marshall*, 4 Railw. C. 58; *Ex parte Eton College*, 20 L. J. (Ch.) 1; 15 Jur. 45; *Re Ellison*, 25 L. J. (Ch.) 379; 8 De G., M. & G. 62. Where a tenant for life, who had mortgaged his estate, petitioned for investment, and the mortgagee, who had been served with notice, appeared to consent, *Shadwell, V. C.*, refused to allow the costs of the mortgagee as against the company. *Ex parte Smith*, 6 Railw. C. 150; 19 L. J. (Ch.) 56. See also *Ex parte Yates*, 12 Jur. 279; *Re Hatfield*, 29 Beav. 370; 32 Beav. 252; *Re Hungerford*, 1 Kay & J. 413. In *Ex parte Brooks' Will*, 31 L. J. (Ch.) 456; 30 Beav. 233, the costs of mortgagees of settled estates were allowed by M. R. See also *Re London and South Western R. Co.*, 2 Johns. & H. 390; S. C. reversed by Lords Justices, 11 W. R. 54; *Re South-Eastern R. Co.*, 11 W. R. 53. And as to the costs of petition for interim investment, see *Re Shuttleworth*, 4 Giff. 46.

(*k*) See post, p. 336. If lands are purchased for a larger sum than the money deposited, the difference being paid by the party interested in the investment, the company are not liable to pay any additional costs, caused by reason of the price paid being greater than the deposit. *In re Brammer*, 14 Jur. 236; *Ex parte Hodge*, 16 Sim. 159; *Ex parte Corporation of Carlisle*,

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s. 80, App. 58.

the purposes aforesaid, and of the orders for the payment of the dividends (*l*) and interest of the securities upon which such monies shall be invested, and for the *payment out of Court* (*m*) of the *principal* (*n*) of such monies, or of the securities whereon the same shall be invested, and of all proceedings *relating thereto*, except such as are occasioned by litigation between adverse claimants (*o*): Provided always, that the costs of one application only, for re-investment in land, shall be allowed, unless it shall appear to the Court, that it is for the benefit of the parties interested in the monies that the same should be invested in the purchase of lands in different sums, and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the company (*p*).

W. R. 1852—3, p. 103. But see *Re Sheffield and Lincolnshire R. Act*, 12 Jur. 239. Where a company was empowered by the special act to take lands belonging to a vicarage, and it was declared that the purchase-money should be paid into Court, and that, on a petition by the vicar and patron, and with the consent of the ordinary, it might be laid out in the purchase of other lands, and a purchase was made accordingly:—Parker, V. C., decided, that the bishop was entitled to receive from the company, not only the costs of his attendance in the Master's Office, but also of his appearance on the usual petitions to the Court. *Ex parte Vicar of Chreech St. Michael*, 21 L. J. (Ch.) 677. When money has been re-invested in other lands, the extent to which companies are liable to the costs of acquiring a good title to the purchased lands, under various special acts, differing in some respects from the Lands Clauses Consolidation Act, is considered in *Jones v. Lewis*, 11 Jur. 511; *Re Strachan's Estate*, 9 Hare, 185.

(*l*) Semble, that these words do not extend to make the company liable to the costs of the *payment* of the dividends. *Ex parte Athorpe*, 3 Y. & Coll. 396; *Mitchell v. Newell*, 3 Railw. C. 515. Where the purchase-money of lands taken by three railway companies was paid into Court, and the tenant for life presented three petitions for payment of dividends, Wood, V. C., intimated that in future the costs of only *one* such petition would be allowed. *Ex parte Lord Broke*, 11 W. R. 504.

(*m*) This applies to an application made for the transfer of the fund, to the credit of another cause, in Court. *Kindersley*, V. C., *Melling v. Bird*, 22 L. J. (Ch.) 599. As to this case, see post, p. 340.

(*n*) See post, p. 338.

(*o*) See post, p. 338. Where one of several persons applies for an aliquot share of purchase-money paid into Court, it is not necessary to serve the other parties entitled with notice of the application. Per Lord

Langdale, M. R., *Re Midland R. Co.*, 11 Jur. 1095. And if they appear, the company are not liable to pay the costs of their appearance. *Melling v. Bird*, 22 L. J. (Ch.) 599; 17 Jur. 155. The company are liable to pay the costs of infants, who, having attained their majority, petition to have the fund in court paid to them. *Ex parte Slater*, 18 L. J. (Ch.) 431. But upon an application to withdraw money, the company are not liable to pay the costs of the defendants in another suit in equity, who were interested in the fund, and who were necessarily served with notice that the application was about to be made. Per K. Bruce, V. C., *Hore v. Smith*, 14 Jur. 55. But see *Haynes v. Barton*, post, p. 338. In *Ex parte Lilley*, 19 L. J. (Ch.) 329, Shadwell, V. C., said, he would not refuse certain costs, which the company objected to pay in consequence of the introduction into the petition of a verbatim copy of various sections of the Consolidation and Railway Acts. His Honor said, the practice of making such insertions was liable to much abuse, but he could not lay down the rule contended for on behalf of the company. But see *Re Manchester R. Co.*, 8 Hare, 31. Where an order for costs omitted the usual words, excepting costs of adverse litigation, the Lords Justices, upon appeal, ordered their insertion. *Re Cant's Estate*, 29 L. J. (Ch.) 119; 6 Jur. (N. S.) 183. And see S. C., 1 Giff. 12; 4 De G. & J. 503. The word "such" refers to costs, not proceedings, *ibid*.

(*p*) In two cases where the Court had a discretion as to the allowance of the costs of investment, the costs of two applications were given. *Ex parte Eton College*, 3 Railw. C. 271; *Ex parte Trustees of Waste Lands of Roxmoor*, *id.* 513. In another case, where the costs of a third investment out of a sum of 125,000*l.* were asked for, the Vice-Chancellor granted the application. *Re St. Katherine's Dock Co.*, 3 Railw. C. 514; and see *Re Merchant Tailors' Co.*, 10 Beav. 485, and the principle laid down by Lord Lang-

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Under this section therefore it seems that the company (*q*) are liable to pay the costs, including therein all reasonable charges and expenses incident thereto, of the following matters:—

1. Of the *purchase or taking of the lands*, or which have been incurred in consequence thereof, other than such costs as are by the act otherwise provided for.
2. Of the *investment* in government or real securities of all monies deposited in the Bank under the Lands Clauses or special act (except in certain special cases, see the section, ante, p. 332).
3. Of the *re-investment* thereof in the purchase of other lands.
4. Of *obtaining* proper orders for any of the purposes aforesaid.
5. Of *orders for the payment of the dividends* and interest of the securities whereon the monies are invested (*r*).
6. Of *orders for the payment out of Court of the principal* of such monies, or of the securities whereon the same shall be invested, and of *all proceedings relating thereto*, except such as are occasioned by litigation between adverse claimants.

The cases upon 1, 2, 4 and 5 of these divisions of the subject have been already mentioned in the notes, but those upon 3 and 6 appear to require a more lengthened notice.

First, as to the third of the above divisions, viz., as to the costs of *re-investment*. It will have been observed that sect. 69 (*s*) authorizes the application of purchase-money or compensation to some one or more of four different purposes, viz.—

Costs of re-investment.

1. Purchase or redemption of land tax or discharge of debts or incumbrances (*t*);
2. Purchase of other lands;

dale and Rolfe, B., Lords Commissioners, in *Jones v. Lewis*, 19 L. J. (Ch.) 539; 2 Macn. & G. 163; *Re London, Brighton, &c. R. Co.*, 18 Beav. 608. In *re Vaudrey*, 3 Giff. 224; 30 L. J. (Ch.) 885, the costs of two abortive attempts to re-invest in land, and of a deed disentailing the money, were allowed by Stuart, V. C. And in *Re St. Bartholomew's Hospital*, 4 Drew. 425, where the purchase-money had originally been only 1,056*l.*, Kindersley, V. C., allowed the costs of a *third* re-investment of a portion which did not exhaust the fund. In fact, there seems no limit except that there must be a reasonable exercise of discretion on the part of those investing. *Re London Bridge Acts*, coram Wood, V. C., Nov. 1862, 11 W. R. 81; *Brandon v. Brandon*, 31 L. J. (Ch.) 20.

(*q*) Where there is a large fund formed of payments by several companies, they must divide the costs of re-investment equally and not rateably; but the ad valorem stamp must be divided rateably. *Ex parte Bishop of London*, 29 L. J. (Ch.) 575;

2 De G., F. & J. 14; *Re Byron*, 32 L. J. (Ch.) 584; 1 De G., J. & Smith, 358; *Re Merton College*, *ibid.* 361. See *Re Maryport, &c., R. Co.*, 32 L. J. (Ch.) 811; 32 Beav. 397.

(*r*) Applications for payment of dividend are now made in chambers, Cons. Ord. 1860, xxxv. 1. As to apportionment of dividends, see *Re Longworth's Estate*, 1 Kay & J. 1. Where the costs of orders in respect of dividends are occasioned by litigation between adverse claimants, they must be borne by the petitioners, not by the company, *ibid.* The company are not liable to pay the costs of a petition for payment of dividends after property re-settled. *Re Pick*, 31 L. J. (Ch.) 495.

(*s*) Ante, p. 323.

(*t*) In *Ex parte Bishop of London*, 29 L. J. (Ch.) 575; 2 De G., F. & J. 14, it was held, that leases granted by the bishop out of other lands of the see were incumbrances. See also *Re Manchester, Sheffield and Lincolnshire R. Co.*, 21 Beav. 162, and 23 Beav. 605.

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3. Buildings;

4. Payment to person entitled absolutely ;

whilst this part of sect. 80 now under consideration only throws upon the company the costs of (2) re-investment in the purchase of *other lands*. It would seem therefore to be clear, *independently of authority*, that in the event of the Court authorizing an application of monies to (1) the purchase or redemption of land tax or the discharge of debts, or to (3) buildings, or to (4) payment to a person absolutely entitled, the costs of such re-investment (apart of course from the costs of payment of the money out of Court, of which presently) ought not to be thrown upon the company; and accordingly we find it decided that where the money is applied to the discharge of debts or incumbrances (*u*), or in the erection, alteration or improvement of buildings (*x*), only the costs of the petition for payment of the money out of Court have been thrown upon the company. But in one case (*y*) Sir J. Romilly, M. R., made the company pay the costs where the money was applied in redeeming land tax, saying:—

“This case comes within the provisions of the Lands Clauses Consolidation Act, and the application of the purchase-money to the redemption of the land tax is a re-investment within the meaning of sect. 80. The costs of it are therefore payable by the railway company. The two cases, *Re Buckinghamshire R. Co.* (*z*) and *Ex parte Hardwicke*, which were cited, do not apply; for in the former the application was for the investment of purchase-money in alteration of almshouses, and it is therefore clearly distinguishable from the present case, and will not conflict with my present decision; and as to the latter case, it appears not have been decided upon the Lands Clauses Act at all, but upon the special act, and it is therefore no authority in the present case.”

*Re London,
Brighton, &c.
Railway Com-
pany.*

*Ex parte Mil-
ward.*

In a subsequent case (*a*), however, his Honor, in authorizing the application of compensation-money to the erection of *new buildings*, refused to fix the company with the costs of the petition, saying the point was settled by *Re Buckinghamshire R. Co.*, and the costs must come out of the fund in Court. This latter case therefore seems to be somewhat at variance with the former, and more in accordance with previous decisions. But in neither of the two last-mentioned cases, nor in *Re Buckinghamshire R. Co.*, does the attention of the Court appear to have been called to that part of sect. 80 which appears clearly and justly to throw upon the company in all cases the costs of an order for the payment of the principal out of Court (*b*), as distinct from the costs of re-investment, a distinction which appears from the reports frequently to have been lost sight of. But,

(*u*) *Ex parte Earl of Hardwicke*, *Ex parte Yates*, ante, p. 324, note (*g*). But see cas. cit. supra, note (*t*).

(*x*) Cas. cit. supra, p. 325, note (*k*).

(*y*) *Re London, Brighton, &c. R. Co.*, 18

Beav. 608; 23 L. T. 216.

(*z*) 14 Jur. 1065.

(*a*) *Ex parte Milward*, 27 Beav. 571; 29 L. J. (Ch.) 245.

(*b*) Ante, p. 334.

in a later case (c) before Wood, V. C., in which he ordered the purchase-money of glebe land to be paid to the incumbent, to be applied in building a vicarage house, this part of sect. 80 appears to have been more prominently brought before the Court, and accordingly he fixed the company with the costs of the petition (d), saying:—

*Costs in Cases of
Money deposited.
Ex parte Whit-
field.*

“An order for the application of railway money in permanently improving buildings, was made by Lord Cranworth in the case of the Buckinghamshire Railway, though the costs were not there given. With respect to the costs, I think the language of sect. 80 is sufficiently wide to cover the case. The 69th section contains an enumeration of the different modes in which money paid into the Bank by a railway company may be applied. All these particulars are not repeated in extenso in sect. 80, which provides for the costs. This section, however, does make the costs of the orders for the payment out of Court of the principal monies payable by the company.

“There is a case before Shadwell, V. C., in which it seems to have been held, that, although the petition was for the application of the money in restoring buildings which it was necessary to pull down in consequence of the operations of the company, costs were nevertheless payable by the company. The case is the stronger, because there the Court exercised the special power given by the 69th section, of applying the fund in replacing permanent buildings, and did not act under that portion of the clause which directs re-investments in land. There is an omission of any express provision in sect. 80 for the costs of applying money in renewing injured buildings, and it was only on the equity of the statute that the costs were allowed. It seems to follow *à fortiori* that the Court, taking the step which it is asked to take here, and treating the proposed application of the money as an investment in land, (which is within the words of sect. 80,) must follow the principle as to costs which was acted upon in that case.

“The costs would be payable by the company, if the money were actually laid out on land. The proposed building is, in my opinion, an investment authorized by the statute, and the case further falls within the words of sect. 80, ‘the costs of orders for the payment of principal out of Court.’ Having regard, therefore, to the fact that the object of the statute was to throw upon the company all the costs occasioned by taking land without the consent of the owner, and that very large words were introduced into the statute to supply the defects which had been found in analogous provisions of earlier acts, I am of opinion that the company must pay the costs of the petition and of the payment out of the money.”

Where the lands, &c., purchased are “conveyed, limited and settled upon the like uses, trusts and purposes, and in the same manner as the lands in respect of which the money was paid stood settled,” under sect. 69, it is held that, upon the equity of the statute, the company are liable to pay the costs of such re-settlement.

*Costs of re settle-
ment.*

And in a case in which at the time of the purchase by a railway company, and when the purchase-money was paid into Court, the uses of the land sold were different from those subsisting at the time

(c) *Ex parte Incumbent of Whitfield*, 2 Johns. & Hemm. 610; S. C., shortly and rather differently reported, 30 L. J. (Ch.) 816. See also *Re Vicar of Queen's Camel*, coram Kindersley, V. C., 11 W. Rep. 503.

(d) But not with the costs of the governors of Queen Anne's Bounty, who had been served with the petition, and appeared.

Costs in Cases of Money deposited.

of the application for re-investment, Kindersley, V. C., refused to make the company pay the costs of the re-investment, but, upon appeal, the Lords Justices varied the order and threw the costs on the company (e).

Whether owner in fee can claim costs of re-investment.

It is believed, that it has never yet been decided whether an owner in fee can claim the costs of a re-investment. But Lord Justice Turner in one case (f) intimated an opinion that he *could*, and, in a subsequent case (g), Kindersley, V. C., seemed disposed to follow that intimation. But in neither of those cases was it necessary to *decide* the point. Such costs seem clearly within the words of sect. 80.

Payment of principal money out of court.

Secondly, as to the sixth of the above (h) divisions, viz., as to the costs of the payment out of Court of the principal monies. The act seems in all cases to throw these costs upon the company, in what manner soever the money may be applied when paid out, except where there is litigation between adverse claimants. Upon this exception there have been numerous cases, the result of which is thus stated by Kindersley, V. C., in *Haynes v. Barton* (i).

Where there are adverse claimants.

Haynes v. Barton.

"The question upon this petition is, as to what costs must be paid by the railway company, who have taken certain lands for the purposes of their railway and paid the purchase-money into Court, and this petition is presented for the payment of such money out of Court. *The petition is entitled not only in the matter of the act, but also in the cause.* I have looked into the cases, and I find, that, though they are not precisely uniform, still there is a principle which is apparent in all. The cases which seem to me to bear chiefly on the question are, first, *Dinning v. Henderson* (j), which came before Knight Bruce, L. J., when V. C. In that case, a devisee in trust, who was the surviving plaintiff in the cause, agreed to sell to a railway company a portion of the testator's estate, under the Lands Clauses Act. The purchase-money was paid into Court in the matter of the act, and the plaintiff presented a petition in the cause and in the matter of the act, to have it transferred to the credit of the cause, and asked that the company might pay to the petitioner and the other parties in the cause their costs of and incident to and consequent on the application. The V. C. said, that sect. 80 of the Lands Clauses Act required a liberal interpretation to be put upon it, and directed the company to pay the costs as prayed. In that case, therefore, the V. C. seemed to consider, that, upon the true construction of the act, the company was bound to pay the costs of the parties in the suit. The next case came before Lord Langdale in 1848, *Re Hull and Selby R. Co.* (k). There a petition was presented by two of the parties to a suit, claiming to be entitled to 1,880*l.* paid into Court, in the matter of the act, by the company, as compensation for land taken by them, praying that the fund might be transferred to the credit of the suit and invested, and that the company might pay the costs, charges and expenses of all parties of and relating to the application. The parties

(e) *Re De Beauvoir*, 29 L. J. (Ch.) 567; 2 De G., F. & J. 5.

(f) *Re De Beauvoir*, ubi supra.

(g) *Re Pick's Settlement*, 31 L. J. (Ch.) 495.

(h) Ante, 335.

(i) 30 L. J. (Ch.) 804; 1 Dr. & Sm. 483; and see *Henniker v. Chafy*, 28 Beav. 621;

Re London and South Western R. Co., 2 John. & H. 390; S. C., reversed by Lords Justices, 11 W. Rep. 54; *Brandon v. Brandon*, 32 L. J. (Ch.) 20; *Re Braye*, 32 L. J. (Ch.) 432; *Re Long*, 33 L. J. (Ch.) 620.

(j) 2 De G. & Sm. 486; 17 L. J. (Ch.) 8.

(k) 5 Railw. C. 458.

were numerous, and some appeared by different counsel. Lord Langdale said, 'I have often had occasion to observe on the powers conferred by the legislature on these companies, by which they are enabled to take away any man's land from him by force, whether he will or not, without giving him a voice in the matter. The laws then are bound to protect individuals whose rights are invaded for the public good against these companies, and if persons are put to expense by having their land taken away from them by those extraordinary powers, it surely would be unreasonable that they should be obliged to bear that expense.' And an order was made according to the prayer. The next case was *Re Taylor* (l), before Lord Cottenham. In that case, the committee of a lunatic contracted with the company, under the authority of the act, for sale of part of the lunatic's estate, and the purchase-money was paid into Court in the matter of the act. The committee presented a petition to have the money invested, but the L. C. said it was necessary to have a reference to the master, to inquire whether the contract was proper and beneficial, having regard to the authority given by the act, and he ordered accordingly. The master having reported in favour of the contract, the committee presented a petition to confirm the master's report, that the petitioner might be at liberty to convey, for payment of interest on the purchase-money for investment, and that the costs of the petitioner of and incidental to the conveyance and investigation, deduction and verification of the title, and of obtaining and prosecuting the reference, and of the petition and of the order to be made thereon, should be paid by the company; and the L. C. said, it was quite clear that the company must pay the costs in question, the reference being rendered necessary in consequence of the purchase. That, therefore, is a clear authority on the subject.

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"The next case was *Picard v. Mitchell* (m), before the Master of the Rolls. The suit was an administration suit, and the company served the usual notice to treat for some of the testator's land. An order was made on a petition in the suit for a reference, to inquire whether it would be most for the benefit of those parties who were infants and married women, that the company should be required to take the whole property, and to determine by which of the modes the compensation ought to be ascertained. After proceedings before the master, the compensation was determined by arbitration, and the money paid into Court; and the petition on which the question arose was presented in the matter of the act and in the cause, praying that the company might pay to the petitioners, and the plaintiffs and the defendants in the cause, their just costs, charges and expenses of and incidental to taking the land, and of and incidental to the former petition and the reference to the master, and of the reference to the arbitrators, and of the agreement of reference, and of that application and of the conveyance, and an order was made according to the prayer. In that case, Lord Langdale said, that, *prima facie*, all the expenses ought to be paid by the company who have occasioned them, and added, 'Where public companies, either for the public good or their private profit, come and violently take the property of others, whether they like it or not, they ought to indemnify the persons against all the expenses which may be occasioned by such a proceeding.' The four cases I have referred to are clear and strong upon the subject, and they decide that the company must pay all the costs occasioned by their taking the lands. Then came *Hore v. Smith* (n), before Knight Bruce, L. J., when V. C., who had, in the case I have already referred to, made the company pay all the costs. In *Hore v. Smith*, the V. C. took a different view, but no cases were cited on that occasion. I do not know whether there were any special circumstances in the case, but at all events none appear in the report. That petition was presented in the cause and in

(l) 1 Macn. & G. 210; 1 Hall & Tw.

(m) 12 Beav. 486.

(n) 5 Railw. C. 592.

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the matter of the act, for payment to the petitioner (who was an annuitant upon certain lands the subject of the suit) of money which had been paid into Court, in the matter of the act, by the company, for land taken by them. The master had found that considerable sums were due to the petitioner for arrears on his annuity, and the petition prayed that the money might be paid to him, and that the company might pay all reasonable charges and expenses of and incident to the application and consequent thereon, and all other charges and expenses properly payable by the company under their act in respect of land taken by them. That was a case under a private act, but the clause in that act relating to costs is precisely the same as sect. 80 of the Lands Clauses Act, and Knight Bruce, V. C., said that the company must pay only such costs as they would have paid if the petition had been presented simply in the matter of the act and not in the cause; and the costs of the defendants, the parties to the cause, must be costs in the cause. As I have said, I do not know whether there were any special circumstances in that case; but at all events, Knight Bruce, L. J., seems to have considered that the company need only pay the costs under the act, and this decision seems contrary to his former decision in *Dinning v. Henderson*. The next case is *Patten v. Gally (o)*, before Turner, L. J., when V. C. In that case real estate was devised to one for life, with remainder to trustees for sale, with power to give receipts and discharges. Part of the estate was taken by the E. C. Railway Company for the purposes of their railway, and the purchase-money was paid into Court under the provisions of the Lands Clauses Act. After A.'s death a suit was instituted for the administration of the estate of the testator, and, on that suit coming on upon further directions, a petition was presented by one of the parties on the record, praying to have the fund carried over to the credit of the cause, and therefore it was presented in the cause and in the act, and came on to be heard with the cause, and had been served on the trustees for sale and on all the other parties in the cause, several of whom appeared. The master had found that the proceeds of part of the property would consist of the fund, the subject-matter of the application. The different parties who appeared asked that their costs might be paid by the company. Four counsel appeared for the different parties to the suit, and the counsel for the company cited *Re Hore's Estate*, and suggested that the money might have been paid to the trustees on their application after the death of A., prior to the institution of the suit, without service on any other party, the sale being necessary. Turner, V. C., however, held, that the costs could not be separated, and that the costs of all parties served must be paid by the company according to the act; so that notwithstanding the case of *Hore's Estate*, he held that the company must pay all the costs. The next case is *Carpmael v. Proffitt (p)*, which, though not precisely the same case as the present, is analogous to it. The petitioner's land in that case was taken by a railway company, and the purchase-money paid into Court in the matter of the railway company's act. The petitioner then agreed for the purchase of other land which was sold in a suit. On the petition in the matter of the act there was the usual evidence as to title, which, having been approved, the petitioner presented his petition in the cause, and in the matter of the act, to carry out the purchase; and Wood, V. C., made the company pay the costs of both petitions, including (as I think is apparent) the costs of the parties to the suit. In *Melling v. Bird (q)*, which came before me in 1853, a suit had been instituted for the administration of the estate of a testator who had devised lands in trust for sale; the company had taken part of the estate and paid the purchase-money into Court in the usual way. The plaintiffs, who were entitled to one-tenth of the testator's estate, presented a petition in the cause and in the matter of the act, for a transfer of the fund to the credit of the cause, and served the trus-

(o) 1 W. Rep. 22.

(p) 23 L. J. (Ch.) 165.

(q) 22 L. J. (Ch.) 599.

tees and the parties entitled to the other nine-tenths, who appeared by four different solicitors; and it appeared to me that the company was bound to pay the costs of all parties properly served, but that it was oppressive for the parties to appear in the way they had done, and which had thrown unnecessary costs on the company, and therefore, although I made the company pay the costs of the trustees, I refused to make them pay the costs of the other parties interested in the nine-tenths, who had the same interest as the petitioners. In that case, therefore, I upheld the principle, but refused the costs on another ground, namely, because they had severed in their appearance. The next case is *Re Pickton's Estate* (r). In that case the petitioner was tenant for life of property which had been charged by settlement with 3,200*l.* in favour of other persons, and the petitioner had filed a bill praying that the sums charged on the estate by the settlement, and the debts due from the testator under whose will the petitioner was tenant for life, might be raised by sale or mortgage of the estate. A decree was made directing a sale or mortgage of a sufficient part of the property to satisfy the charges thereon. Before the suit the company had taken a portion of the property and paid the purchase-money into Court, and the petition prayed that the money might be carried to the credit of the cause; and Wood, V. C., referring to *Melling v. Bird*, said the principle of that case was the correct one, and gave the trustees their costs, but refused the costs to the other parties, ordering that such costs might be costs in the cause; but he seems to have considered that I refused the costs in *Melling v. Bird*, not on the ground that they had unnecessarily increased the expense, but that such costs should not be paid by the company at all. The last case to which I must refer is *Wilson v. Foster* (s). In that case a suit had been instituted to administer the estate of Sir H. Wilson, under whose will Mrs. W. was tenant for life of real estate, with remainders over. A railway company had taken part of the land, and paid the purchase-money into Court in the usual way. A petition was presented by the tenant for life in the suit and in the matter of the act, for re-investment in land of part of the money. The remaindermen and trustees were served with the petition. Now in all the cases to which I have referred, the judges had made the company pay the costs of all parties, but the Master of the Rolls said—'I am of opinion that the company cannot be required to pay the costs of the remaindermen or of the trustees; I concur in the decision in *Hore's Estate*, and I am also of opinion that on applications for the re-investment of compensation money in land the parties ought to join in the petition, which they might have done under the act, if not in the cause, but the trustees and the remaindermen who approved of this purchase and of the investment in land ought not to have appeared as respondents, and I cannot require the company to pay their costs. The company must pay all the costs of the petitioner, and the costs of serving the other parties with the petition, but not the costs of the appearance of the remaindermen and of the trustees, which, in my opinion, was unnecessary. All that was necessary was an affidavit of service on them. The extra costs may be paid out of the fund in Court.' The effect of that case is that it was necessary to present the petition in the cause as well as in the act, and therefore necessary to serve the other parties, but they ought not to have appeared, and therefore the company ought not to pay their costs; in that respect only is there any variation between this case and those I have already referred to. These are the cases in which a petition has been presented not only in the matter of the act but also in a cause; and it appears to me that *the current of authorities is strongly in favour of the company being required to pay the costs, not only of the petitioner but of the other parties whom it is necessary to serve*. If, indeed, the parties appear in such a manner, as they did in *Melling v. Bird*, as to create unnecessary expense, the

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(r) 3 W. Rep. 327.

(s) 26 Beav. 398; 28 L. J. (Ch.) 410.

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company will not be required to pay such unnecessary expenses, but that is an exception to the general rule that the company must pay the costs of all parties which have been rendered necessary through the company's taking the land; and I must say I fully concur in the opinion expressed by Lord Langdale, that if companies are armed with the power of taking land, they must be made to pay all the expenses occasioned by their doing so. The exception in the 80th section of the act is that the company cannot be made to pay any costs occasioned by adverse litigation, but this is the only exception to the general principle I have just stated. Apply that principle to the present case. This is a petition presented by trustees (there being a suit), asking for the re-investment in land of the money, or part of it, which has been paid into Court by the company, and that the dividends may be paid to the tenant for life. The petition was served on the tenant for life and remainderman, and he appears. Now it seems to me that, being presented in the cause as well as in the matter of the act, they were properly served, and they have not appeared in such a way as to make their appearance oppressive, and therefore I think their costs must be paid by the company. But there was a former petition which was presented for the purpose of obtaining the direction of the Court as to the course to be taken with reference to the notice to treat served by the company. The company offered a certain sum for the property, but it was thought the land was worth more. The result is as to the costs of the former petition, applying the principle laid down in *Taylor's case* and in *Picard v. Mitchell*, that those costs having been occasioned by the company taking the land should be paid by them. The only remaining question is, whether the company should pay the costs occasioned by their taking possession of the property before the agreement was entered into and without paying the compensation money into Court. That was a wrongful act on their part, and it became necessary to take certain proceedings in consequence of it, which were afterwards rendered unnecessary by the company paying the 850*l.* into Court. I do not think I can order the company to pay these costs, as they are not costs of proceedings under the act which I can deal with upon the present petition. I apprehend, however, that the parties may get them out of the suit, but I cannot now make the company pay those costs."

III. *Whether Money deposited is to be treated as Real or Personal Estate.*

Whether money
deposited is real
or personal estate.

An important question has been discussed, upon which the authorities are not perhaps quite uniform, as to whether money deposited by companies who have taken or purchased lands, under the compulsory powers of their acts, is to be treated as money, or personal estate impressed with the trusts of real estate—money-land as it is sometimes called.

Under sect. 76,
personalty.

The only principle deducible from the cases is, that where the matter comes under sect. 69 of the Lands Clauses Act, the money remains impressed with the character of real estate; and when it comes under sect. 76, the money goes as personalty (*t*). In *Cross's case* (*u*), before Lord Cranworth, V. C., where the determination

(*t*) *Re Harrop*, 26 L. J. (Ch.) 516. And see *Re Bagot*, 31 L. J. (Ch.) 772; *Ex parte Hardy*, 30 Beav. 206.

(*u*) *Re East Lancashire R. Co.*, 1 Sim. (N. S.) 260; and see *Ex parte Hawkins*, 3 Railw. C. 505, note (*a*).

was that it came under sect. 76, it was decided, that money deposited for the purchase of freehold land taken under the Lands Clauses Act from an owner who was in a state of mental imbecility, and who continued in that state until his death, but who was not the subject of a commission of lunacy, could not after his death be considered as subject to the trusts of a will made before he became incompetent, and whereby he had devised his real estates, but that his executors were entitled to it, and an order was made accordingly.

But in another case (*x*) where real estate, settled on marriage upon trusts for sale, on the request of husband and wife, or the survivor, was taken by the corporation of London under the compulsory powers in the London Bridge Acts, without any conveyance by the trustees, and the value of the land was assessed by a jury and paid into Court, and, on petition of the trustees, invested in consols upon the trusts of the settlement,—Turner, V. C., decided, that under these circumstances, there was no conversion of the real estate into personalty, the case being under sect. 69.

Under sect. 69,
realty.

So where a landowner (*y*), having land within the limits of deviation, entered into an agreement with a company, that in case they should construct their railway under their act, they should pay him a certain sum per acre for such of his land as they should require; and after his death the company took five acres of his land, and paid the purchase-money into Court, and the devisee of the estate on which the railway had been constructed, having petitioned to have the money paid to him, the petition being opposed by the executors, Kindersley, V. C., decided that the case was under sect. 69, and the contract did not operate as a conversion of the purchase-money into personal estate, but it formed a portion of the testator's real estate at the time of his death, and continued to retain that character afterwards. His Honor said:—

Re Walker.

“Without adverting to the other points which have been discussed, or referring to the decisions in the earlier cases, which, I must be permitted to say, are most unsatisfactory (*z*); but, assuming that I should be obliged to follow them in a similar case, still this does not seem to me to come within the authorities cited. The real meaning of the contract is this: that the company, having power to take the lands compulsorily from the owner at any time within the period allowed by the act, did not ask him to sell, but they wished to have the price defined, in case they required the property, and a sum per acre was fixed upon between the parties. Without using these precise words, it is evident that such was the meaning of the agreement. It referred to the fact that some of the land was included within the limits of deviation, but it was uncertain what portion would be required. If, however, the company did construct their line within the limits of deviation, and required

(*x*) *Re Taylor*, 9 Hare, 598; 20 L. J. (Ch.) 142; and see *Midland Counties R. Co. v. Oswin*, 3 Railw. C. 497.

Drew. 508.

(*z*) Referring to the before mentioned, and other cases.

(*y*) *Re Walker*, 22 L. J. (Ch.) 888; 1

Under sect. 69,
realty.

any of the owner's land, they were to pay for it, at that rate per acre. The effect, therefore, was not that the owner contracted to sell, but that he gave the company permission to have the land at a specified price. It appears to me, upon these grounds, that the money which has been paid into Court does not constitute part of the personal estate of the testator, but formed a portion of his real estate at the time of his death, and continued to retain that character afterwards; and that it now belongs to the parties entitled to the real estate."

Re Stewart.

Again (a), where lands settled on one for life, with remainder to her children, with remainder over to B. in default of children, in fee, were taken under the authority of a Railway Act, which contained the usual compulsory clauses, and the purchase-money was paid into Court, and invested in consols, and the dividends were ordered to be paid to the tenant for life, who afterwards died without children, and B. afterwards also died, having done no act in his lifetime showing any intention to treat the consols as personal estate: Stuart, V. C., decided that the consols were to be treated as the real, and not as the personal, estate of B. His Honor said:—

"In support of the argument that the property had been converted into personal estate, *Cross's case* (b) has been cited, and I must say, that, although that case does not go to the whole extent of the principle here contended for, it does countenance the argument. Against that authority, other cases have been cited; and to the principle of these decisions I entirely accede. I think that where money has been paid into Court, by reason of real estate having been taken under the compulsory powers of one of these acts, and remains in Court, it is to be considered as money or personal estate in the hands of this Court, impressed with the trusts of real estate. That is a sound principle; and there must be strong words in the act to induce the Court to act on the assumption that it is personalty. Therefore it seems to me clear, upon authority and principle, that the money in Court in this case is to be considered, for the purpose of the question as to who was entitled to it, as real estate" (c).

Upon similar principles, *Kindersley*, V. C., held purchase-money of land belonging to a felon, who returned after seven years' transportation, remained impressed with the character of real estate, and was not forfeited to the Crown (d). Where the land was entailed, the money must be disentailed before the parties can get it (e).

(a) *Re Stewart*, 22 L. J. (Ch.) 369. And see *Re Horner's Trusts*, *ibid.* 369; 7 Railw. C. 373.

(b) *Ante*, 342.

(c) See also on this subject, *R. v. Commissioners of London Docks*, 12 East, 477; *King v. Witham Navigation Co.*, 3 B. & Ald. 454; *Haynes v. Haynes*, 30 L. J. (Ch.) 578.

(d) *Re Harrop*, 26 L. J. (Ch.) 516.

(e) *Re Great Southern and Western R. Co.*, 9 Ir. Eq. R. 482; and see *Re Vaudrey*, 3 Giff. 224; 30 L. J. (Ch.) 885, where the costs of a disentailing deed were allowed against

the company. See also *Re Holden*, 1 Hemm. & M. 376. But in *Re South-Eastern R. Co.*, 30 Beav. 215, where the land had been conveyed in fee to the company by a tenant in tail, the M. R. ordered the purchase-money to be paid to the tenant in tail without a disentailing deed. On the petition, a copy of the whole disentailing deed must be annexed to the affidavit as an exhibit; and not merely the effect of the deed stated in the affidavit. *Re Field*, 8 L. T. (N. S.) 722.

IV. *The Title to and Conveyance of Lands purchased.*

When lands are purchased by the company by agreement, or are taken under the compulsory powers contained in the special act, the owner or other party entitled to sell or convey the lands is required to make out a good title (*f*); and it is usual to deliver an abstract of the title to the company (*g*), as in the case of an ordinary sale of lands. The owner is also required to execute a conveyance to the company. We have already seen that the Lands Clauses Act provides for the inconvenience which would result by the neglect or inability of the party to perfect the title and make the conveyance, by authorizing the company to execute a deed-poll, and thereupon, in certain cases, all the estate and interest in the lands vest absolutely in the company, without any further act being done by the vendor (*h*).

Vendor delivers an abstract of his title.

Special provisions are also inserted, to enable the company to take a conveyance of copyholds—common lands—waste lands—and lands in mortgage—and to release lands from existing charges. As to lands of copyhold or customary tenure (*i*) it is provided by the Lands Clauses Act, that every conveyance of such lands to the company shall be entered on the rolls of the manor, and on payment to the steward of the manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof (*k*), he shall make such inrolment; and every such conveyance, when so inrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure; nevertheless, until such lands shall have been enfranchised, by virtue of the powers hereinafter contained, they shall continue subject to the same fines (*l*),

Provisions for releasing lands from incumbrances.

Copyholds.

8 & 9 Vict. c. 18, s. 95, App. 62.

(*f*) In the absence of an agreement to the contrary, the costs of making out the title are paid by the company. See post, 348; and see the evidence given before the Lords' Committee, ante, 262.

(*g*) It seems to be the practice of railway companies to be satisfied with a good holding title. See the evidence given before the Lords' Committee, ante, 262. Where a company purchased lands from a municipal corporation and made their railway over it, and a dispute afterwards arose as to the title to the lands, but the corporation obtained a verdict on an ejectment, as it was alleged, by surprise, and the company, under the pressure of the judgment, and to retain possession of the land, paid the purchase-money to the corporation, Sir J. Romilly, M. R., upon a representation that the title to the land was really in dispute, and being of opinion that, as the vendors were trustees, the money ought originally to have been paid into Court, under the 69th section of the Lands Clauses Act, ordered the corporation to bring the money into Court, whilst the rights of the parties were under discussion.

North Western R. Co. v. Corporation of Lancaster, 16 Jur. 677.

(*h*) Sect. 75, ante, 329.

(*i*) Where the lord of a manor was held not to be affected by a sale of copyhold lands, made to a company by his tenant in fee, see *Dimes v. Grand Junction Canal Co.*, 9 Q. B. 469, in error.

(*k*) It has been contended, that by this provision the steward of the manor is entitled to demand a fee for a surrender, and another fee for admittance, inasmuch as the parliamentary conveyance operates as both a surrender and admittance, and that it would be unjust to oblige the steward, for one fee, to perform an act which, under ordinary circumstances, would entitle him to demand two, but the Court of Exchequer decided that only one fee is payable. *Cooper v. Norfolk R. Co.*, 3 Exch. 546; 13 Jur. 195; 6 Railw. C. 94.

(*l*) The lord is not entitled to any fine upon the execution of a conveyance to a railway company under this section, nor to any compensation for the loss thereof. *Ecclesiastical Commissioners v. London and South-Western R. Co.*, 14 C. B. 743. The

Copyholds.

8 & 9 Vict. c. 18,
s. 96, App. 63.

rents, heriots and services as were theretofore payable and of right accustomed. And by sect. 96 the company are required, within a certain period afterwards, to pay the lord of the manor compensation, to be assessed according to the mode prescribed, for the enfranchisement of the land (*m*). The lands, when enfranchised, are to be held in free and common socage; and if the lord fails to enfranchise the lands, the company may execute a deed-poll, in the manner provided in the case of a purchase of lands (*n*): (Sect. 97.) Rents payable in respect of copyhold lands may, in certain cases, be apportioned in the manner prescribed: (Sect. 98.)

Common and
waste lands.
Sect. 99.

As to common and waste lands, it is provided, that compensation in respect of the right in the soil shall be paid by the company to the lord of the manor: (Sect. 99.) And, upon payment or deposit thereof in the Bank, a conveyance from the lord of the manor to the company will operate as if he had been seised in fee simple; and in default of such conveyance the company may execute a deed-poll, in the manner provided in the case of a purchase of lands: (Sect. 100.) The compensation to be paid to the commoners is determined by agreement, made between the company and a committee of commoners: (Sect. 101.) The members of such committee are not to exceed five in number, chosen by the commoners at a meeting, convened by the company, by public advertisement and notice: (Sects. 102, 103.) The committee may then agree with the company, as to compensation for the extinction of the commonable rights; and the committee receive the amount, and apportion it among the commoners (*o*): (Sect. 104.) If the committee and the company cannot agree, the compensation is determined as in other cases of disputed compensation (Sect. 105); or, if no committee be appointed, then by a surveyor, to be appointed by two justices: (Sect. 106.) Upon payment or deposit of the money agreed upon or determined for compensation, the company may execute a deed-poll, in the manner provided in the case of a purchase of lands, and thereupon the lands vest in the company, discharged from all commonable and other rights: (Sect. 107.)

Lands in mort-
gage.

To relieve lands taken by the company, from being encumbered by existing mortgages (*p*), the company are empowered to pay off all mortgages affecting lands, upon giving notice to the mortgagee, or

provisions of the Copyhold Enfranchisement Acts, 1852, 1858 (15 & 16 Vict. c. 51; 21 & 22 Vict. c. 94), do not apply to the purchase of copyholds by a railway company under the Lands Clauses Act, so as to entitle a tenant for life of the manor, as against a remainderman, to part of the monies paid into Court by the company, as representing fines payable by tenants as a condition of compulsory enfranchisement. *Re Sir T. M. Wilson*, 32 L. J. (Ch.) 191.

(*m*) See *Ecclesiastical Commissioners v.*

L. and S. W. R. Co., ubi supra.

(*n*) See as to this conveyance, post, 348.

(*o*) If the majority of the committee are of opinion that these provisions for apportionment cannot be satisfactorily carried out, they may apply to the inclosure commissioners under 17 & 18 Vict. c. 97, ss. 15-20, post, App.

(*p*) When the company should give notice to the mortgagee to treat for the lands, see ante, 196.

paying six months' additional interest; and the mortgagee must then convey his interest in the lands to the company: (Sect. 108.) If the mortgagee fails to convey the lands, or to adduce a good title, the company may deposit the monies in the Bank, and execute a deed-poll in the manner provided in the case of a purchase of lands, and all the interest of the mortgagee thereupon vests in the company: (Sect. 109.) If the mortgaged lands are of less value than the mortgage debt, a provision is made for ascertaining the amount of compensation: (Sect. 110.) A provision is also made for completing the title of the company, without affecting the remedies possessed by the mortgagee, under the mortgage-deed, against the mortgagor: (Sect. 111.) In like manner, provision is made for ascertaining the compensation, and completing the title of the company, where a part only of the mortgaged lands is taken, and the mortgagee does not consider the remaining part sufficient security (*q*): (Sects. 112, 113.) If a mortgagee is compelled to accept his money, at an earlier period than the time limited in the mortgage-deed, he is entitled to be paid the costs of re-investing the money, and also compensation for any loss he may sustain by the re-investment (*r*): (Sect. 114.)

Lands in mortgage.
8 & 9 Vict. c. 18,
s. 109, App. 65.

Where lands are subject to rent-charges, it is provided that differences respecting the consideration to be paid for releasing them from such charges, are to be determined as in other cases of disputed compensation: (Sect. 115.) If only a part of the lands charged be required, then such part may be released, by agreement between the owner of the lands, and the party entitled to the rent-charge on the one part, and the company on the other part: otherwise by two justices: but if the remaining lands are a sufficient security, then, by consent, such remaining lands may be made subject to the whole charge: (Sect. 116.) If the party entitled to the rent-charge fails to release it, or to make a good title, the company may deposit the compensation money in the Bank, and execute a deed-poll in the manner provided in the case of a purchase of lands; and thereupon the rent-charge becomes extinguished: (Sect. 117.) If the lands released were subject to the charge, jointly with other lands, such other lands remain liable for the whole, or the remainder of the charge, as the case may be; and the company may affix their common seal to the instrument which created the charge, stating the facts; and such memorandum is made evidence: (Sect. 118.)

Rent-charges.
Sect. 115.

If lands are comprised in a lease for years unexpired, and a part only of such lands is required by the company, the rent of the remaining portion is to be apportioned by agreement, or by two jus-

Leases for years.
Sect. 119.

(*q*) Where the person in possession claimed under an old mortgage, but with a possessory title, it was held that sect. 112 did not apply. *Re Cook*, 8 L. T. (N. S.) 759.

(*r*) The Court of Chancery will restrain a company, by injunction, from proceeding with works until this is paid. *Ranken v. East and West India Docks R. Co.*, 12 Beav. 298.

tices; and after such apportionment, the lessee is liable only for the rent so apportioned (*s*): (Sect. 119.)

The conveyance
of the lands.

8 & 9 Vict. c. 18,
s. 81, App. 59.

With respect to the form of the conveyance, the statute provides that conveyances of lands to be purchased may be according to the form in the schedules (A. and B.) (*t*) to the act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the company may think fit (*u*); and all conveyances so made are effectual to vest the lands thereby conveyed in the company, and operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts and interests whatsoever of and in the lands comprised in such conveyances, which shall have been purchased or compensated for, by the consideration therein mentioned; but, although terms of years be thereby merged, they shall in equity afford the same protection, as if they had been kept on foot and assigned to a trustee for the company to attend the reversion and inheritance (*x*): (Sect. 81.)

Costs of convey-
ance.

Sect. 82.

The costs of all such conveyances are to be borne by the company, and such costs include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the company may require, and all other reasonable expenses incident to the investigation, deduction and verification of such title (*y*): (Sect. 82.)

(*s*) As to compensation to tenants, see ante, 211, 250.

(*t*) See these forms, post, App. Some useful observations on the use of these statutory forms may be seen in Messrs. Friend and Ware's Collection of Precedents of Conveyances relating to transfers of Lands to Railway Companies, 133.

(*u*) This deed must be stamped with the stamp duty which would have been payable upon a conveyance of the land. Railway companies will probably be advised, in all cases which fall under the purview of the 77th section, to perfect their title, by executing a deed-poll in pursuance of the statute. It seems to have been the intention of the Legislature (probably with a view to the Stamp Acts) to require a conveyance in all cases. In the following cases, which arose on Canal Acts, it was decided that lands may be vested otherwise than by an actual conveyance. *Bruce v. Willis*, 11 A. & E. 463; 2 Railw. C. 7; 3 P. & Dav. 220; *Doe v. Warwick Canal Co.*, 2 Bing. N. C. 483; 2 Scott, 7; *Earl of Harborough v. Shardlow*, 7 M. & W. 87; 2 Railw. C. 253. But it will be found that 8 & 9 Vict. c. 18, differs materially from the Canal Acts above

referred to. A railway company, requiring to take lands, gave notice of their intention to the plaintiff, who had an annuity charged upon them, as a person having an interest therein. The plaintiff claimed compensation, but the company, without attending to that claim, purchased the property from a prior incumbrancer, who had a power of sale, and it was decided by Kindersley, V.C., that the plaintiff was entitled to be paid the amount of his charge, according to the value at the time he received the notice, although the company had obtained a conveyance of the legal estate in the lands. *Hill v. Great Northern R. Co.*, 23 L. J. (Ch.) 20. When the interest on the monies deposited ceases to run, in favour of the vendor of the lands, see *Ex parte Earl of Hardwick*, 1 De G., M. & G. 297; *De Visme v. De Visme*, 1 Macn. & G. 336; 19 L. J. (Ch.) 52; *Lewis v. South Wales R. Co.*, 22 L. J. (Ch.) 209.

(*x*) And see 8 & 9 Vict. c. 112.

(*y*) But not including the costs (as of a surveyor) of ascertaining the thing to be conveyed. *Re Hampstead Junction R. Co.*, 33 L. J. (Ch.) 79. See *Re Spooner*, 1 K. & J. 220.

If the company and the party entitled to any of the above costs do not agree as to the amount, the costs may be taxed (z) by one of the taxing Masters of the Court of Chancery, or by a Master in Chancery in Ireland, upon an order of the same Court; and the company are required to pay what the Master shall certify to be due, or, in default, the same may be recovered in the same way as any other costs payable under an order of the Court, or the same may be recovered by distress, in the manner provided in the act; and the expense of taxing such costs are to be borne by the company, unless, upon the taxation, one-sixth part of the amount be disallowed, in which case the costs of taxation are to be borne by the party whose costs are taxed: (Sect. 83.)

Costs of conveyance.

In a case decided before the passing of the Consolidation Act, where a landowner contracted with a railway company to sell them a certain portion of his land, and the landowner died, and the legal estate in the lands descended to infants, it was ruled, that, as the vendor had suffered the legal estate in the lands to descend to the infants, and had thereby occasioned the necessity of a suit, in order to procure a conveyance of the legal estate, the costs of the suit ought to be defrayed out of the purchase-money (a).

When the company are not liable to the costs of making the title.

So, where the trustee of a copyhold estate died, leaving an infant his heir, and the *cestui que trust* agreed to sell a part of the estate to a company for the purposes of a railway act, and, to complete the title, it became necessary to take proceedings under the Trustee Act, 1 Will. IV. c. 60, to get a surrender from a person appointed in the place of the infant, and the taxing Master having allowed all the costs of the proceedings, as against the company, Sir J. Romilly, M. R., decided, that these costs ought not to have been allowed, saying:—

Costs of title.
Re South Wales Co.

“These costs do not come within the 82nd section. It is important to observe the difference between the 80th and 82nd clauses. The 80th provides, that railway companies shall pay, not only the costs and reasonable charges and expenses ‘of the purchase or taking of the lands,’ but also all those ‘which shall have been incurred in consequence thereof.’ But the 82nd clause, which is applicable to the present case, specifies that the costs to be paid by the company shall be these [His Honor read the section]. I cannot think the costs in question costs of any ‘conveyance or assurance,’ or of ‘deducing, evidencing or verifying the title,’ or incident to the ‘investigation, deduction and verification of such title.’”

“It is said, that this was a difficulty as to the conveyance: that is so; but I find nothing in the 82nd clause which makes it incumbent on the company to pay the expenses of getting a proper person appointed to make the conveyance to the

(z) If the lands are purchased under a special agreement made between the parties, quære whether the costs may be taxed. *Ex parte Great Western R. Co.*, 3 Railw. C. 516. The Master has no power to tax the costs of tenants or persons not conveying. *Marquis of Drogheda v. Great Southern and*

Western R. Co., 12 Ir. Eq. Rep. 103.

(a) *Midland Counties R. Co. v. Wescomb*, 2 Railw. C. 211; *Same v. Caldecott*, id. 394; see also *Ex parte Ommaney*, 10 Sim. 298; *Farrer v. Lord Winterton*, 4 Y. & Coll. 472; *Eastern Counties R. Co. v. Tuffnell*, 3 Railw. C. 133.

Re South Wales Co.

company. If that argument were carried to its full extent, it might be necessary to pay the costs of every mortgagee on the land, because the concurrence of a mortgagee is always a question of conveyance, and not of title. Here it was the duty of the vendor selling the property to have a proper tenant to the copyhold, for without one it was exposed to a forfeiture to the lord. Besides this the vendors got a tenant admitted, not only to the land sold to the company, but to the whole estate. I think the company are bound to pay the costs of the conveyance, and of deducing, evidencing and verifying the title, but not of the proceedings instituted for the purpose of constituting a proper person to convey the estate to them" (b).

V. *Interests in Lands omitted to be purchased through mistake or inadvertence.*

The following provisions are made by the Lands Clauses Act, with respect to interests in lands which have, by mistake or inadvertence, been omitted to be purchased:—

Company empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.

8 & 9 Vict. c. 18, s. 124, App. 68.

By sect. 124, if at any time after the company shall have entered upon any lands which they were authorized to purchase, and which shall be permanently required for the purposes of the special act, any party shall appear to be entitled to any estate, right or interest in or charge affecting such lands, which the company shall, through mistake or inadvertence, have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the company shall remain in the undisturbed possession of such lands, provided, within six months after notice of such estate, right, interest or charge, in case the same shall not be disputed by the company, or, in case the same shall be disputed, then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the company shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits, or interest which would have accrued to such parties respectively in respect thereof, during the interval between the entry of the company thereon, and the time of the payment of such purchase-money or compensation by the company, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase-money or compensation shall be agreed on or awarded and paid in like manner as, according to the provisions of this act, the same respectively would have been agreed on or awarded and paid, in case the company had purchased such estate, right, interest or charge before their entering upon such land, or as near thereto as circumstances will admit (c).

(b) *Re South Wales Co.*, 14 Beav. 418; 15 Jur. 1145; 20 L. J. (Ch.) 534.

(c) Ante, 278.

By sect. 125, in estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices (as the case may be), shall assess the same, according to what they shall find to have been the value of such lands, estate, or interest and profits, at the time such lands were entered upon by the company, and without regard to any improvements or works made in the said lands by the company, and as though the works had not been constructed.

How value of such lands to be estimated.
8 & 9 Vict. c. 18, s. 125, App. 68.

By sect. 126, in addition to the said purchase-money, compensation or satisfaction, and before the company shall become absolutely entitled to any such estate, interest or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses (*d*) of any proceedings, at law or in equity, for the determination or recovery of the same, to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the Court in which such litigation took place.

Company to pay the costs of litigation as to such lands.
Sect. 126.

It has been held that the effect of sect. 124 is, that if the company dispute the title of the claimant an action of ejectment may be brought, but the Court will stay execution till six months after the title of the claimant is established (*e*). But if the company do not dispute the title, and asking for delay to consult legal advisers does not amount to disputing the title, an ejectment cannot be brought for six months after notice of the claim (*f*), that is, after production of the abstract of title (*g*). This was decided in *Jolly v. Wimbledon and Dorking R. Co.*, in the Exchequer Chamber, when Erle, C. J., in delivering judgement, said:—

If title disputed, ejectment lies.

Otherwise not.

Jolly v. Wimbledon and Dorking R. Co.

"The statute provides for taking the land under every modification of interest, and for the making of compensation in respect of every lawful claim; and it has been uniformly held, that wherever compensation is provided under the statute in respect of any claim, there the common-law remedies in respect of that claim are suspended or taken away. By the sections preceding the 124th, provisions are made in respect of interests known when the lands are taken. The taking is made lawful to the company, the compensation is secured to the owner, and the ordinary remedies at law for the taking alleged to be wrongful are taken away. Then follows sect. 124, with respect to interests in lands which have been already taken, and which interests by mistake have been omitted to be purchased. The intention of the section, by analogy with what has preceded, would be to give the same

(*d*) This means costs as between attorney and client. *Doe d. Hyde v. Mayor of Manchester*, 12 C. B. 474.

(*e*) *Marquis of Salisbury v. Great Northern R. Co.*, 28 L. J. (C. P.) 40; 5 C. B. (N. S.)

174.

(*f*) *Jolly v. Wimbledon and Dorking R. Co.*, 31 L. J. (Q. B.) 95; 1 Best & S. 815.

(*g*) Per Erle, C. J., *infra*.

Jolly v. Wimbledon and Dorking R. Co.

protection against actions in respect of those interests as had been before given in respect of other interests in land. The words are,—the company shall remain in undisturbed possession, if they duly compensate. These words express that the possession not only is then lawful, but has been and shall continue so if the condition is performed. It is very reasonable that a company, giving all parliamentary publicity with plans and books of reference, should have security from litigation for their works under their statute. It is expressly given in respect of all possible known interests, and it seems unreasonable to suppose that an unknown interest should be alone intended to have the privilege of bringing an action against the company, together with a right to compensation under the statute. If, during the parliamentary inquiry, and the company's treaty with the mortgagor, and the laying down of the railway on the lands, the mortgagee kept his mortgage unknown, the company ought to have time to inquire after notice of the claim, that is, after production of the abstract of title. The claim may be unfounded or fraudulent, or it may involve claims of other parties. The necessity for time and caution is shown by *Hyde v. Mayor of Manchester* (h), for there the company had paid for the land in question to one proprietor, and had to pay for it again to Mr. Hyde, with all mesne profits and costs, as between attorney and client, because the arbitrator had made a mistake in the boundary between two properties. Here the question of the validity of the deed, of its operation on five-sixths of the land, of deducting what is due to the mortgagee from the compensation to be paid to the mortgagor, and of deducting for the right of the lessee, if any should exist, must be considered before the compensation can be settled. If the possession of the company is lawful for six months after the title is produced, or the dispute determined, all rights and liabilities would be secured in good order, and this defence would prevail. On the other hand, if ejectment lies for every claimant of an unknown interest before he shows the ground of his claim and allows time for considering it, confusion and disorder will be introduced; for the company will have to decide whether they will suffer judgment by default and hazard the stay of execution upon a conflict of affidavits, or defend the cause with all the risks and imputations brought upon the present defendants for so doing; and also, if within six months compensation is made, any judgment that should have been obtained would thereby become futile. And then no provision is made in respect of costs, either to the claimant as between party and party, or as between attorney and client, or to the company in respect of useless litigation, which the claimant chooses to force them to, and all for no other purpose than securing some promptness in making compensation, about which litigation has probably increased, if not created, the delay. In the case of the *Marquis of Salisbury v. Great Northern R. Co.* (i), the title was shown and disputed, and ejectment was brought to try the title, and it was doubted whether it would lie for lands of which the possession was to be undisturbed; and it was held to be by implication given in the case where the title should be disputed, solely for the purpose of trying the title, execution being stayed as soon as that purpose should be effected. If the title is disputed, the section may be held to give by implication a right to resort to law, and, by limiting the right to the case of disputed title, all would be in order. But if it is given where there is no dispute of title, the confusion above described would follow. This judgment does not conflict with any opinion of the Court below, who considered that the point here was within *Lord Salisbury's case*, but, as above mentioned, that case appears to us to have no application to the present, because there the title was disputed, here it is not."

(h) Post, 353.

(i) Ante, 351.

In the following case the Court of Chancery refused an injunction to stay proceedings to assess compensation under sect. 124. The defendants, the owners of waterworks, solicited a bill in Parliament to extend their works, by constructing a reservoir upon the lands of the plaintiff and others. The plaintiff petitioned against the bill; but, upon an agreement, that the value of the land and the compensation should be settled by arbitration, and that the defendants should fix the exact quantity of the plaintiff's land required within six months after the bill should have passed, he withdrew his opposition, and the bill became an act. The act incorporated a former special act and the Lands Clauses Act, and empowered the defendants to take certain parts of the plaintiff's lands, according to the deposited plans. Prior to the expiration of the six months after the act had passed, the defendants gave the plaintiff notice, specifying the portions of his land that would be required, according to the boundaries in the plan and book of reference. The arbitration proceeded, and, after the expiration of six months, the plaintiff pointing out on the arbitration the inaccuracy in the boundaries, which attributed to the plaintiff's land less in admeasurement than he possessed, the arbitrator made his award, giving compensation for land described according to the plan and book of reference only; but it was in dispute whether he had included in his assessment of value the two roods and five perches which the plaintiff claimed beyond the admeasurement of the land comprised in the plan and book of reference. The defendants paid the amount awarded to the plaintiff. The defendants had made a statutory conveyance to themselves, by deed-poll, describing the land according to the inaccurate plan and book of reference, and they took possession of the land. The plaintiff recovered the two roods and five perches, in an action of ejectment against the defendants (*k*). The defendants then proceeded (within six months after a motion for a new trial made by them had been refused), under the 124th section, to issue their warrant to the sheriff to summon a jury to ascertain the value of the land, and obtain the compulsory purchase of it from the plaintiff. The plaintiff filed a bill for an injunction restraining such proceedings, but Sir J. Parker, V.C., refused it, saying:—

“The defendants must show, in order to bring themselves within the 124th section, that it was through mistake or inadvertence that they had failed or omitted duly to purchase or pay compensation for that land. It appears to me perfectly clear, not only that it was through mistake or inadvertence, but that it was through mistake or inadvertence into which they had been led by the imperfect information of the plaintiff himself, and the way in which he communicated it to them. It appears to me, therefore, that they are clearly within the position of being parties

(*k*) The proceedings on the judgment were afterwards stayed. *Doe d. Hyde v. Mayor of Manchester*, 12 C. B. 474.

Hyde v. Mayor of Manchester.

Injunction to stay proceedings to assess compensation refused.

*Hyde v. Mayor of
Manchester.*

who have failed to purchase the land within proper time, through mistake or inadvertence. Then the plaintiff's counsel said, that might well be so, if the defendants were not bound by the special agreement; but that, by the agreement which they had entered into with the plaintiff to withdraw his opposition to the act, they were bound, within a certain time, to state what precise lands they wanted; that they were therefore not acting under the Lands Clauses Act, but were actually dealing with him on the footing of this agreement, and are now trying to set up something against the agreement. But I do not think that is the true construction of the 124th clause, because the 124th clause provides for all cases in which the promoters of the undertaking shall have entered upon any land which they were authorized to purchase, if it appears that through mistake or inadvertence they failed or omitted duly to pay for it. It seems to me I have nothing to do with the mode in which they entered, or the contract under which they entered into possession of these lands; it is quite enough that the lands which they are in possession of are lands which they were authorized to purchase, and that they have not acquired a complete title to them, not from any fault of their own, but solely on account of mistake or inadvertence. It appears to me quite immaterial how, whether by the agreement or by the compulsory powers, or in what other way, they had got into possession of the land, if the circumstances are, that they are in that position, and that, through mistake or inadvertence they failed to get a complete title. I therefore think they are within the 124th clause; and it seems to me they are within the time provided by the clause, because the clause gives them six months, after the right shall have been finally established at law. They are within six months from the time when the motion for a new trial was refused; and up to that time I think they were justified in saying, that, if they had not got a legal title, they had got at all events an equitable title. I am not satisfied, that at this moment they have not got an equitable title, which they might have enforced, as plaintiffs, against the former owner, and have compelled him to withdraw these proceedings, or to stay his proceedings in the action of ejectment. Therefore it appears to me, as far as can be determined upon an interlocutory motion, that the defendants are proceeding regularly and properly, under the 124th section; and that the plaintiff has no right to come here and interfere with them; and I must refuse the motion with costs" (*h*).

(*h*) *Hyde v. Mayor of Manchester*, 5 De G. & S. 249; 16 Jur. 189; affirmed on appeal, 5 De G. & S. 264.

CHAPTER VIII.

ON THE POWERS AND OBLIGATIONS OF RAILWAY COMPANIES TO CON-
STRUCT AND REPAIR THE WORKS CONNECTED WITH THE RAILWAY.

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I. *The Line of Railway, and herein of Deviations.*

WE have seen that the parliamentary plans and books of reference, which are referred to in every special act, point out the course of the railway (*a*), and, with the exceptions presently to be noticed, no deviations from the line thus laid down are permitted (*b*). But a power to rectify mistakes is reserved to the company, by the Railways Clauses Consolidation Act. Thus, by sect. 7, if any omis-

The Line of Rail-
way, and herein
of Deviations.

(*a*) Ante, 15. If any person wilfully obstructs any person setting out the line of the railway, or pulls up stakes or marks showing the line, he is liable to a penalty of 5*l*. 8 & 9 Vict. c. 20, s. 24, post, App. 79.

(*b*) For this reason, it frequently becomes necessary to obtain a supplementary act of Parliament, to authorize deviations in the line of the railway. A company were empowered to take lands, and to deviate one hundred yards from the line laid down, provided such deviation was made within two years from the passing of their act, and which two years would expire in July, 1838. It appeared that, in January, 1837, a deviation in the line, within the prescribed limit, was made. By an act, passed in May, 1837, the time by the first act limited

for the compulsory purchase of lands was enlarged for one year, but provided that no deviation from the line laid down should be made after the expiration of the period by the first act limited. The railway company having, subsequently to July, 1838, given notice to owners of land on the line to which they had deviated in January, 1837, of their intention to take the lands—on a motion for an injunction, Lord Cottenham, C., decided that the second act gave the company an enlarged period of one year, in which to exercise the power of taking the land in the line to which they had so deviated. *Dun Navigation Company v. North-Midland R. Co.*, 1 Railw. C. 135. See to what periods the compulsory powers may be exercised, ante, 179.

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Errors in plans, &c. rectified.

8 & 9 Vict. c. 20, s. 7, App. 76.

Altered plans.

How far deposited plans and sections are binding on the company.

sion, mis-statement or erroneous description has been made of lands or owners, &c., in the parliamentary plans, schedules or books of reference, the company, after giving notice, may apply to two justices, who have power to certify that the omission arose from mistake, and thereupon to correct the same (*d*). The certificate must be deposited with the clerks of the peace, parish clerks and postmasters, with whom the plans are deposited; and after such certificate has been given, the company may make the works in accordance with it. And by sect. 8, the company are required to deposit with the clerks of the peace, parish clerks and postmasters, a plan and section of all alterations from the original plans and sections which have been approved by Parliament. These plans may be inspected and copied by persons interested, in the same manner as the original plans and sections under 7 Will. 4 & 1 Vict. c. 83 (*e*): (Sect. 9.) Copies of these plans and books of reference, certified by the clerk of the peace, are receivable in evidence: (Sect. 10.)

The special act usually contains a clause to the following effect:—

“And whereas plans and sections of the railway, showing the line and levels thereof, and also books of reference, containing the names of the owners and lessees and occupiers of the land through which the same is intended to pass, have been deposited with, &c.: be it enacted, that, subject to the provisions in this and the said recited acts contained, it shall be lawful for the said company to make and maintain the said railway and works, in the line and upon the lands delineated on the said plans, and described in the said books of reference, and to enter upon, take and use such of the said lands as shall be necessary for such purpose.”

This provision makes it important to ascertain to what extent the plans and sections and books of reference thus referred to are so incorporated with the special acts as to make them obligatory upon the company, when they proceed to construct the railway and other works.

It has been decided by the House of Lords, and may be considered to be settled beyond dispute, that the plans deposited under the Standing Orders, prior to the introduction of a bill into Parliament, are not binding upon the company nor to be regarded, except so far as the representations they contain are afterwards incorporated in and made part of the act of Parliament (*f*). This being the law, the question in each case as to the obligatory character of plans and sections is either wholly or in part dependent on the construction of the act authorizing the execution of the works.

(*d*) *Taylor v. Clemson*, 2 Q. B. 978; 3 Railw. C. 65; 11 Cl. & Fin. 610. It would seem that if the justices are satisfied that the omission, &c. arose from mistake, they are bound to certify. In *Ex parte Central Wales R. Co.*, Q. B., Mich. T. 1864, the Court of Queen's Bench granted a rule *nisi* for a mandamus to justices to certify under

sect. 7, which rule was afterwards made absolute by consent on certain terms.

(*e*) See App. 1.

(*f*) This rule renders it incumbent on landowners not to rely upon the statements in the deposited plans, as to the surface levels.

The above rule was laid down in the case of *North British R. Co. v. Tod (g)*, the facts of which case were as follows:—The deposited plans showed that a railway would intersect an avenue leading to a mansion-house, in a cutting of fifteen feet four inches, and that the level of the roadway of the avenue, at that place, would be raised two feet by a bridge, under which the railway would be carried. The owner of the mansion-house was averse to the railway being carried through his avenue at all, but, relying upon the representations contained in the plan and sections, was induced to abstain from opposing the bill in Parliament. The company, after the act was obtained, proposed to intersect the avenue, by a cutting of only two feet ten inches; and the bridge would in consequence rise seventeen and a-half feet above the level of the avenue, thereby causing a deep descent on both sides. This proposed line was clearly within the limits of deviation permitted by the acts of Parliament, both vertically and laterally, but the descriptions in the deposited plans and sections, which showed the cutting of fifteen feet four inches, were founded upon a mistake made by the engineer who prepared them. Under these circumstances, the Court of Session in Scotland prohibited the company from crossing the avenue in the manner proposed; but their decision was reversed by the House of Lords, who laid down the rule above mentioned, and held that in the case then before the House, the special and general railway acts *made the plan only binding to the extent of determining the datum line*, and the line of railway measured with reference to that datum line, but *not* with reference to the *surface levels* of the lands; and that it made no difference that the deposited plans were so incorrect as altogether to mislead the owner of the lands, with reference to the manner in which his property would be affected by the railway works.

In giving judgment, Lord Lyndhurst, C., said:—

“The first question is, what is the rule in respect to applications for interdicts in Scotland, or for injunctions in England, as applicable to cases of this kind? The case on the part of the respondent being, that a plan was exhibited to him and to the public, previous to the passing of the act under which the railway was intended to be made, which plan represented that the railway would pass over his land, in a cutting of something more than fifteen feet from the surface. The respondent alleges that, giving faith to these representations, he had, as he naturally might, come to the conclusion as to what course he was to pursue with reference to the supposed state of circumstances as represented upon that plan; and that now the company have not only deviated, which they had a right to do, by another line within the prescribed distance, which is one hundred yards, but they also propose to deviate beyond five feet vertically, which is the limit of the vertical deviation imposed by the act; that is, they propose to come nearer the surface by a space exceeding five feet. The company say that they do not dispute that they are

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(g) 12 Cl. & F. 722; 5 Bell, 184; 4 Canal Co., 28 L. J. (Ch.) 153; 3 De G. & J. Railw. C. 449; and see *Ware v. Regent's* 212; 23 Beav. 575.

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actually coming nearer the surface, to a much greater extent than the five feet, but they say, that they are still within the prescribed deviation from the datum line, as laid down for the formation of the railway; the datum line being an imaginary line, taking its commencement from some given point at a certain elevation, and then that line is supposed to run in a perfectly horizontal direction, and the inclination of the railway is measured with reference to that datum line. They say they are within the distance, that is, within the five feet of the line laid down upon those plans, measured with reference to the datum line; and they contend, therefore, that they are within the provisions of the act of Parliament, and that they are not deviating beyond what that act authorizes. Now, as to the effect of plans exhibited previous to the contract being made, or previous to the act of Parliament being obtained, it does seem, from cases which have occurred both in Scotland and in this country, that the rule of the Courts in this country and in the other is no longer a matter of any doubt or dispute. If a contract, or an act of Parliament, refer to a plan, to the extent that the act refers to the plan, and for the purpose for which the act or contract refers to the plan, undoubtedly it is part of the contract or part of the act. As to that there is no dispute. A contract or an act of Parliament either does not refer to a plan at all, or it refers to it for particular purposes. It has been contended, both in Scotland and in England, that the defendant in the suit, or those who claim the benefit of the provisions of an act of Parliament, previous to this enactment being made, or the contract being concluded, have represented that the works are to be carried on in a particular mode, upon a plan shown previous to the powers being obtained under the act, or the contract being concluded, and that the party obtaining the act, or obtaining the contract, is bound by such representation. There was a case very much considered in Scotland, *The Feoffees of Heriot's Hospital v. Gibson* (h), and several cases have occurred in the Courts of equity in this country. It was my fortune to have to consider the matter very minutely in *Squire v. Campbell* (i), in which I thought it my duty to review all the cases that had occurred in the one country and in the other, for the purpose, if possible, of establishing a rule which might be a guide on future occasions where similar cases should occur; and I found that, certainly, what had been very much the opinion of the profession in this country, viz., that the parties were bound by the exhibition of such plans, had met with a very wholesome correction by the doctrine laid down by Lord Eldon and Lord Redesdale, in the case of *Heriot's Hospital*, decided by this House. Under the authority of that case, in which the point was very distinctly raised, and deliberately decided upon, I came to the conclusion that there was no ground for equitable interposition. Now, my Lords, not relying upon the authority of *Squire v. Campbell*, but relying, as we are bound to do, upon the case of the *Feoffees of Heriot's Hospital*, I consider that to be the rule to which the Courts of this country, and the Courts of Session in Scotland, and this House, must hereafter adhere. Taking that, then, to be the rule in examining the facts of this case, and the act of Parliament upon which the question turns, we are not to look at what was represented upon the plan, except so far as its representation is incorporated in, and made part of, the act of Parliament; and the real question, therefore, turns upon this, whether the acts of Parliament do or do not make the datum line, and line of railway with reference to that datum line, the subject-matter of these enactments, and the rule by which the rights of the parties are to be regulated, or whether it also includes the surfaces which, in this instance, accidentally, no doubt, had been very much misrepresented upon the plan. We are first of all, then, to refer to the act of Parliament under which this railway is to be carried into effect, and the enactment

(h) 2 Dow. 301.

(i) 1 My. & Cr. 459.

is in the 16th section. I may here observe, before I refer to that section, that everything which is out of the act, is to be found in the Standing Orders of the one House or the other; but the plans, which are required to be exhibited by those Standing Orders, except so far as they are made part of this act, are, as I apprehend, entirely out of the question; for although it may be very convenient that Standing Orders should require plans to be exhibited, containing matters which are not binding between the parties, still, when we are looking to what the rights of the parties are, we can only look to the act of Parliament by which those rights are regulated. Plans or proceedings previous to the enactment can have no effect upon the enactments themselves. [His lordship then read the 16th section of the special act, which is similar to the usual clause set out ante, 356.] There is a parliamentary authority that the parties are to be at liberty to make 'the railway and works on the line, and upon the lands delineated in the said plans.' We have therefore only to look at what is the meaning of the word 'line' as used in this act of Parliament. The reciting part of that section speaks of 'lines' and 'levels.' It is therefore necessary to look to other acts, the general acts being required to be incorporated, to see what is the meaning of those terms used in this section; because this is a power under which the company are to act, and if they bring themselves within the meaning of the enactment, explained by provisions and sections to be found in other acts of Parliament, beyond all doubt they are then exercising the powers which the legislature intended to vest in them. In the Railways Clauses Consolidation Act for Scotland (7 & 8 Vict. c. 33), we have several sections to which it is necessary to refer; to the 7th and 8th I only refer for the purpose of observing, that the plans which are therein referred to, are in cases where, after the original plans have been deposited, it has been found that they contain certain errors, and then it defines the means by which the parties are to correct those errors and to make their plans correct. But by the 11th section, 'In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line, described in the section approved of by Parliament and as marked on the same, to any extent exceeding, in any place, five feet, without the previous consent of the owners,' &c. It then provides for the case of passing through a town, as to which other provisions are introduced. The description, therefore, of the levels, when it speaks of the levels of a railway, is in very distinct terms. It describes the level of the railway as referring to the common datum line described in the section approved of by Parliament.

"The 15th section provides for a lateral deviation, which is not now in question. The power which is given by that section has been acted upon, and it is not contended that the lateral deviation does exceed that power. Then come the enactments of the 16th section, 'That subject to the provisions in this and the said recited acts contained, it shall be lawful for the company to make and maintain the railway and works in the line, and upon the lands delineated in the said plans.' And then it goes on to enumerate the works which the company are to be authorized to make. Now, taking these enactments, because I do not find that the other acts contain any provisions which are very material to be attended to,—taking those two enactments together, it appears to me to be quite plain, that the legislature intended, in speaking of lines, and in speaking of levels of the intended railway, to confine those provisions and to refer them to the datum line, and not to any other representation. Although great convenience may arise from the plans and sections required by the Standing Orders to be exhibited, previous to the application to Parliament for powers to make the railway, representing the surface as well as the datum line, and the intended line with reference to that datum line, yet if any difficulty should arise as to the construction to be put upon the section to which I

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have referred, we must recollect that Parliament must be supposed to have had before it, not only the line, as explained in these sections, but also the other surface line which is exhibited in the plan. But the enactment totally disregards the surface line, and confines it in terms to the datum line,—to the line of railway to be measured and ascertained with reference to its distance from the datum line.

“ I say then, that a case does arise upon these provisions of the act, in which the plan indeed is referred to, but is, in the terms of the act of Parliament, referred to only for the purpose of ascertaining the line of the railway, with reference to the datum line. It is not referred to with reference to any surface level. The plan, therefore, is entirely out of the enactment, and it is not to be looked at for the purpose of construing the enactment as to any part of it, except so far as it is referred to and incorporated in the act. Arriving at that construction of the rule upon the provisions of the two acts to which I have referred, and applying it to the principle which has been established in the cases I have mentioned, we have no difficulty in coming to the conclusion, that the application of that principle will necessarily lead to the construction of the clauses to which I have referred. The plan is binding, to the extent of determining the datum line, and the line of railway measured with reference to that datum line, but not with reference to the surface levels of the land, because the act does not apply it for that purpose, but cautiously confines the enactment to the other plans to which I have referred.

“ Acting, therefore, upon the principle so established, and with reference to the construction, or what I conceive to be the construction, to be put upon these sections, although we cannot but greatly lament the hardship which, in all probability, these circumstances have imposed upon the respondent, in having his land interfered with in a manner which he did not at all anticipate ; yet, when we are called upon to consider whether the Court of Session is correct or not, we are bound to look to see what are the powers which these acts vest in the company ; and for the reason I have explained, I come to the conclusion that the company have not exceeded those powers, and do not propose to exceed those powers, in the plans they have formed, and that the Court of Session has been in error in granting the interdict.”

Lord Campbell said :—

“ I acknowledge that I come to the conclusion at which I have arrived with very great reluctance. It seems to me to be a case of very great hardship upon the respondent. But when we come to consider what the law upon the subject is, I feel bound to concur in the opinion which has been expressed. What is the legal construction of the act of Parliament ? Does the company, or does it not, propose to exceed the powers which the acts of Parliament confer upon it ? Now it is admitted, that if the deviation is to be calculated from the datum line alone, they (the company) do not propose, either vertically or laterally, to exceed the powers of deviation which are conferred upon them. Well, then, that raises the question, whether those powers of deviation are to be calculated from the datum line alone, or whether the surface level is to be taken into consideration ; and my opinion is, that the act does refer everything to the datum line. I think it is evident that the 11th section clearly makes the datum line alone that which is to be regarded. The word ‘levels,’ in the plural number, really does not at all include the surface levels. It means merely the levels of the datum line, which point out the course the railway is to go. If that be so, the company do not propose to do anything that they are not authorized to do, according to the letter of the act of Parliament.

“ There certainly was a representation made here on the part of the company, when they proposed to bring in the act, by which they intimated that, at that time,

the intention was that the railway should be fifteen feet four inches below the surface of the respondent's property at the point of intersection; and that the bridge, by which his approach should pass over the railway, would not be more than three feet. But this was entirely an intimation, on the part of the company, that such was their intention. An act of Parliament of this sort has, by Lord Eldon and by all other judges who have considered the subject, been considered as a contract. Well then, what took place was a negociation, it was not a contract. We must disregard it, and we must look to see what the contract was. The contract is to be gathered from the words of the act of Parliament; and that brings us to the question that I first considered, what is the construction of the act of Parliament? That act of Parliament must be considered as overruling and doing away with everything that had taken place prior to the time when the act passed, and renders the representation or proposal of the company, pending the act, of no avail. Many cases have occurred in the courts of common law in which it has been held that everything that takes place before a written contract is signed, is entirely to be disregarded in construing the contract. Now, if the respondent had been cautious, he would have done what I would strongly recommend to all gentlemen hereafter to do, under similar circumstances, which is, to have a special clause introduced into the act of Parliament to protect their rights. I do not believe there is any committee, either in the House of Commons or in the House of Lords, who, if he had asked for a clause, providing that the railroad should be of the depth of fifteen feet four inches (with a power of vertical deviation, perhaps), in crossing his approach, and that he should be able to pass it by a bridge, not more than three feet in height, would not have acceded to such a clause as a matter of course; for it is only reasonable that the respondent's property should be protected in this manner, and that he should be saved from such deformity being erected in the sight of his dwelling-house, which would, for all time to come, be a great nuisance thereto, and might diminish its value. But he abstained from introducing any such clause, and therefore he must be considered as having acceded to the company's having all the powers which the act of Parliament confers upon them. I have read the case of the *Feoffees of Heriot's Hospital*, and also the admirable judgment of the lower court in *Squire v. Campbell*, in which all the cases on the subject are reviewed; and these cases remove all doubt from my mind, and induce me now, I may say, without hesitation, although with very great reluctance, to come to the conclusion that, neither upon the construction of the act of Parliament, nor upon the ground of the representation that was made, is there any sufficient reason for supporting this interdict. I therefore agree in the judgment which has been expressed."

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This decision of the House of Lords has frequently been acted upon in subsequent cases. The following is an instance (j):—The plaintiff was lessee of certain premises in Hill Street and Navigation Street, Birmingham. The defendants obtained an act for carrying their railway through both these streets, which cross each other at right angles. In the construction of their works it became necessary to erect two bridges, for connecting the portions of the streets intersected by the railway. Both streets were included in the plans and books of reference, but when the plans were deposited it was not contemplated, and it did not appear upon them, that any change in

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(j) *Beardmer v. L. and N. W. R. Co.*, 1 Jur. 337; 1 Hall & Tw. 161; and see *Macn. & G.* 112; 18 L. J. (Ch.) 332; 13 *Breynton v. Same*, 10 Beav. 238.

Lord Campbell, C.J., said:—

"It is quite clear on general principles, and on the authority of *North British R. Co. v. Tod* (n), that the mere exhibition of plans and sections in Parliament does not make them obligatory upon the company when they obtain an act; it can only be something in the special act itself, or the general act, which can have that effect. It was supposed that by the general act, 8 & 9 Vict. c. 20, s. 14, this obligation must be imposed, considering this road as an 'engineering work;' but it is quite clear that section applies only to the construction of the railway, and not to cross-roads. Then it has been allowed, that in the first special act there is nothing to make these plans and sections obligatory. But reliance is placed on the 9th section of the 9 & 10 Vict. c. ccxlix, which provides, that 'it shall be lawful to the company to construct the bridge for carrying the railway hereby authorized over any roads, or for carrying any roads over the said railway, of the heights and spans and in the manner shown on the section deposited as hereinbefore mentioned.' The inclination of my opinion is, that this section is obligatory so far as it goes; but the question is, to what extent does it go? And we think that it only applies to the heights and spans delineated in the plans and sections, which are expressed, and *expressio unius est exclusio alterius*. There is nothing said as to the rates of inclination, and it would be strange if they had been in the same way rendered obligatory, because there is a power of deviation from the datum line of railway, which would render them wholly inapplicable. Therefore we think sect. 9 of the supplemental act applies only to the heights and spans delineated in the plans and sections deposited and they have been followed, although the rates of inclination have been altered. There must, therefore, be judgment for the defendants."

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R. v. Caledonian R. Co.

With respect to lateral deviations (o), it is enacted, by the Railways Clauses Act, sect. 15, that it shall be lawful for the company to deviate (p) from the line delineated on the plans deposited, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the said plans, nor to a greater extent, in passing through a town, village or lands continuously built upon, than ten yards, or elsewhere to a greater extent than one hundred yards from the said line; and that the railway, by means of such deviations, be not made to extend into the lands of any person, whether owner, lessee or occupier, whose name is not mentioned in the books of reference, without the previous consent in writing of such person, unless the name of such person shall have been omitted by mistake, and the fact that such omission proceeded from mistake shall have been certified in manner therein, or in the special act, provided for in cases of unintentional errors in the said books of reference.

Lateral deviations.

8 & 9 Vict. c. 20, s. 15, App. 77.

In a case (q) where, by a railway act, the lands to be taken for the line of the railway were not to exceed twenty-two yards in breadth, except where a greater breadth should be necessary for embankments, &c., and a subsequent section provided that the company, in making

Doe d. Payne v. Bristol and Exeter R. Co.

If the line is carried to the extent of the line of deviation, slopes, &c. may be taken by consent beyond the prescribed limits.

(n) Ante, p. 357.

deviation, post, p. 371.

(o) As to vertical deviations, see post, p. 365.

(q) *Doe d. Payne v. Bristol and Exeter R. Co.*, 6 M. & W. 320; 2 Railw. C. 75.

(p) See the limitation on this power of

with their slopes and embankments in other lands, provided they have the consent of the parties to whom those lands belong, and not without" (r). *The Line of Railway, and Deviations.*

This decision was afterwards followed in the Queen's Bench, in a case (s) where the Court said the expression "deviation" in the acts of Parliament, and particularly the 8 & 9 Vict. c. 20, s. 15, is to be taken with reference to the line of railway only; that is, that the line of railway actually laid down shall not deviate more than 100 yards from the line laid down and delineated in the parliamentary plans, the *medium filum vice* of each being the commencement and termination in measuring those 100 yards (t).

But it is important to notice that this power of deviation could not formerly be exercised at all upon lands on which viaducts or tunnels were intended to be made. For by sect. 13 it is enacted that where a viaduct is marked on the plan as intended to be made, it must be made accordingly (u); and where a tunnel is marked on the plan as intended to be made at any place, the same is required to be made accordingly, *unless the owners of the land shall consent* that the same shall not be so made. A tunnel might therefore be dispensed with by consent, but a viaduct could not. And by sect. 14 (x), tunnels, among other engineering works, might not be deviated from, though in certain cases cuttings might be substituted for tunnels and embankments for viaducts, by permission of the Board of Trade; and the Court of Common Pleas decided (y), that the effect of these provisions, if unaffected by the special act, was, that where on the plan deposited in Parliament and referred to in the act, a tunnel is shown, there at that very place the tunnel must be made, unless dispensed with by consent, and that the power of deviation given by sect. 15, in ordinary cases, does not arise. Viaducts and tunnels.

(r) A railway act prescribed the general line of the railway, and afterwards (sect. 59) directed that it should pass between streets A. and C., and so as to leave twenty-four yards between the railway and either A. or C., or otherwise, if there were not twenty-four yards between, the company should, if required, purchase such space as was less than twenty-four yards, and also half of A. or C., as the case might be. The railway, without deviating from the line first prescribed, passed over street A.; but the company had previously purchased the whole of street A. It was decided that this was a compliance with sect. 59. *Taylor v. Clemson*, 2 Q. B. 978; 3 Railw. C. 65; 11 Cl. & F. 610.

(s) *Doe d. Armistead v. North Staffordshire R. Co.*, 20 L. J. (Q. B.) 249; 16 Q. B. 526.

(t) If the company exceed the limits of deviation allowed by the above section, a

landowner, wishing to restrain them, must of course apply to a court of equity for an injunction without delay, or he will be met by a charge of acquiescence. *Hopkins v. Great Northern R. Co.*, 11 L. T. 306.

(u) See *Attorney-General v. Tewkesbury and Malvern R. Co.*, 32 L. J. (Ch.) 482; 1 De G., J. & Sm. 423; 8 L. T. (N. S.) 196, 682; post, p. 372, n. (i).

(x) Post, App. p. 77.

(y) *Little v. Newport and Hereford R. Co.*, 22 L. J. (C. P.) 39; 12 C. B. 752; post, 382. By the Commons' Standing Orders, Nos. 47 and 57 (1865), tunnels and viaducts are required to be shown on the plans and sections, and the above decision seemed formerly to make it necessary to insert a clause in the special act to meet the inconveniences which were likely to arise. But see now 26 & 27 Vict. c. 92, s. 4, post, p. 366.

The Line of Railway, and Deviations.

26 & 27 Vict. c. 92, s. 4, App.

Power to alter engineering works,

if authorized by certificate of Board of Trade.

But the difficulties caused by these provisions were removed by the Railways Clauses Act, 1863, which provided (sect. 4), that—

“Notwithstanding anything in the Railways Clauses Consolidation Acts respectively contained, the company, in the construction of the railway may *deviate from the line* or level of any *arch, tunnel or viaduct*, described on the deposited plans or sections, so as the deviation be made within the limits of deviation shown on those plans, and subject to the limitations contained in sects. 11, 12 and 15 of those acts respectively, and so as the nature of the work described be not altered; and may also *substitute* any engineering work not shown on the deposited plans or sections *for an arch, tunnel or viaduct*, as shown thereon; *provided* that every such substitution be authorized by a certificate of the Board of Trade; and the Board of Trade may grant such certificate in case it appears to them, on due inquiry, that the company has acted in the matter with good faith, and that the owners, lessees and occupiers of the lands in which the substitution is intended to be made consent thereto, and also that the safety and convenience of the public will not be diminished thereby: *Provided* that nothing in the present section shall affect any power given to the company, or to the Board of Trade, by sects. 11, 12, 14 or 15 of the last-mentioned acts respectively.”

Branch line.

It has also been ruled, that lands within the limits of deviation may be taken for the purpose of forming a branch railway, although the main line has been previously completed, inasmuch as 8 & 9 Vict. c. 20, s. 16, contains a power authorizing the making of “permanent ways,” and the effect of this provision is not affected by sect. 45, which applies to such lands for additional conveniences, as the owner may be willing to sell (*z*).

When lands beyond limits of deviation may be taken.

A question has also arisen as to the right of the company to take lands beyond the limits of the lines of deviation, as laid down in the plans, in cases where the lands sought to be obtained have been numbered and described in the books of reference, although they were not within the lines of deviation. The decisions (*a*) show that in certain cases the company may use such lands, if they are necessary for the purpose of forming stations, or other works of a similar character described in sect. 16 (post, 369). It may, however, be doubtful whether these decisions can be applied to the extent of authorizing a company to take lands beyond the limits of deviation, unless it appears that the object is to carry into effect the declared purposes of the special act (*b*).

(*z*) *Sadd v. Maldon R. Co.*, 6 Exch. 143; 20 L. J. (Exch.) 102. See ante, 184.

(*a*) *Cother v. Midland R. Co.*, 2 Phil. 469; post, 385; *Crauford v. Chester and Holyhead R. Co.*, 11 Jur. 917; post, 384; *Richards v. Scarborough Market Co.*, 23 L. J. (Ch.) 110; post, 386. So in *Doe d. Armistead v. North Staffordshire R. Co.*, 20 L. J. (Q. B.) 249; 16 Q. B. 526, a small portion of land beyond the limits of deviation was held to be properly taken by the company;

but in that case there had been a notice given by the owner, which fact is relied upon in the judgment.

(*b*) It will be seen that, in *Cother v. Midland R. Co.*, ubi supra, the act was passed, and the lands were required, for the purposes of an extension. And in *Crauford v. Chester and Holyhead R. Co.*, ubi supra, for the purposes of an additional station.

If the special act prohibits the company from entering upon or taking lands without the consent of the owner, it is then in the power of one individual to stop the progress of the undertaking, although the special act may specifically point out the intended course of the railway. Thus, where a statute authorized a company to form their railway by a certain line over lands described, and a subsequent section provided that nothing in the act should authorize the company to enter into or take or damage the lands or effects of any corporation or person whomsoever, without his consent in writing, it was decided that it was competent for a rival company to refuse to allow their railway to be crossed, although the effect of such a construction of the statute was to prevent the undertaking from being carried into execution (c).

The Line of Railway, and Deviations.

Where owner's consent required.

It appears also that a railway company cannot sell part of the soil of their line, after it is opened for public traffic, unless by express powers contained in an act of Parliament. Thus, where a railway company were authorized by their act to cross the line of another company and to purchase lands for that purpose, and they accordingly gave a notice to the latter company to treat for certain lands adjoining to the railway, but it was insisted that the company giving the notice to treat were bound to purchase the soil on which the railway was actually constructed at the point of crossing, as well as the lands on each side of that railway; upon an application for a mandamus, it was decided that the acts gave no power to one company to sell, or to the other company to purchase, any part of the soil of the line of the intersected railway (d).

The soil of another railway cannot be purchased, except under express powers.

So where a company had power "to make and maintain the railway and works on the line and upon the lands delineated in the parliamentary plan, and described in the books of reference, and to enter upon, take and use the lands, or such of them as should be necessary for that purpose;" but they were not to enter upon, take or use any of the land or property of a certain pre-existing company, or in any manner to alter, vary or interfere with that railway, or any of the works appertaining thereto, save only for the purpose of effecting the junction, in manner in the act authorized, and not otherwise; and by another clause in the act, certain powers were given to the company for effecting a junction with the pre-existing railway: *Kindersley, V. C.*, was of opinion that the construction of the act was, that if it was absolutely necessary for the construction of the railway and for

Junctions with existing lines.

(c) *Clarence R. Co. v. Great North of England, Clarence and Hartlepool Junction R. Co.*, 4 Q. B. 46; S. C., in equity, 2 Railw. C. 763. See also *Gray v. Liverpool and Bury R. Co.*, 9 Beav. 391; 10 Jur. 364; post, 392.

(d) *R. v. South Wales R. Co.*, 6 Railw. C.

489; 19 L. J. (Q. B.) 272; 14 Q. B. 902. See also 26 & 27 Vict. c. 92, s. 10, post, App. As to the ad valorem duty payable on conveyance, where transfer authorized by act of Parliament, see *Furness R. Co. v. Commissioners of Inland Revenue*, 33 L. J. (Exch.) 173.

The Line of Railway, and Deviations.

Junctions with existing lines of railway.

the purpose of effecting a junction, to purchase the plaintiffs' lands, then it gave powers for that purpose,—but that assumed that the junction could not be effected without purchasing; but his Honor being of opinion that there was no ground for assuming that the junction could not be effected without making a purchase, he decided that the company had a right of easement only over the plaintiffs' line, so as to effect the junction (*e*).

Where a special act provided that nothing therein contained should be construed to prevent any owner or occupier of any land through which the railway might pass from carrying any railway or other road, which such owner or occupier was authorized to make in his lands, across the main railway, within the respective lands or grounds of such owner or occupier, it was decided in the House of Lords, on appeal, that this provision enabled the owner of land on one side of the railway to make a railway across the main railway and over lands on the other side, of which he had become lessee since the passing of the act, because the clause was obviously intended for the convenience of those who might be occupiers, or from time to time become occupiers, of the land, partly on one side and partly on the other side of the principal railway, and that without reference to the title under which the lands might be held (*f*).

So where a canal act authorized the proprietors of any mines of coal, within certain parishes, to make any railway or roads to convey their coals to the intended canal, over the lands of any person, first paying satisfaction for damages, &c., it was held that this power to make railways extended to persons who became proprietors of coal-mines subsequently to the passing of the act; and that such proprietors were empowered to make railways to be traversed by locomotive engines, though such engines were not in use when the act passed (*g*).

And a railway company have been held bound to afford facilities to another railway company to form a junction with their line, although the latter company were not entitled to purchase the land, and their powers of compulsory purchase of land had expired; and an injunction was granted by Parker, V. C., to restrain the defendants from interfering with the plaintiffs in making a junction (*h*).

The Railways Clauses Act, 1863, also contains special provisions with respect to junctions between railways (*i*).

(*e*) *Oxford W. and W. R. Co. v. South Staffordshire R. Co.*, 1 Drew. 263. See also *Manchester and Lincolnshire R. Co. v. Great Northern R. Co.*, 9 Hare, 284, where a similar question was raised before Turner, V. C., who granted an injunction to restrain the defendants from taking by compulsion a portion of the plaintiffs' railway, for the purpose of crossing it, and in the meantime a case was sent to a court of law.

(*f*) *Monkland and Kirkintilloch R. Co. v.*

Dixon, 3 Railw. C. 273.

(*g*) *Bishop v. North*, 11 M. & W. 418; 3 Railw. C. 459; and see *Farrow v. Vansittart*, 1 Railw. C. 602, and *Dand v. Kingscote*, 2 Railw. C. 27.

(*h*) *Great Northern R. Co. v. East and West India Docks, &c. R. Co.*, 7 Railw. C. 356.

(*i*) 26 & 27 Vict. c. 92, ss. 9–12, post App.

II. *General Powers to construct Railway and Works.*

These powers are of a very extensive nature (*j*). The Railways General powers to construct railway and works. 8 & 9 Vict. c. 20, s. 16, App. 78. Clauses Consolidation Act enacts (*k*), "That, subject to the provisions and restrictions in that act and the special act contained, or in any act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith thereafter mentioned, to execute any of the following works (that is to say):

"They may make or construct in, upon, across, under or over any lands, or any streets, hills, valleys, roads, railroads or tram-roads, rivers (*l*), canals, brooks, streams or other waters, within the lands described in the said plans, or mentioned in the said books of reference, or any correction thereof, such temporary or permanent inclined planes, tunnels (*m*), embankments, aqueducts, bridges, roads (*n*), ways (*o*), passages, conduits, drains, piers, arches (*p*), cuttings and fences, as they think proper (*q*):

"They may alter the course of any rivers not navigable, brooks, streams or watercourses, and of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water (*r*), roads (*s*),

(*j*) As to the powers enabling the company to take lands, see ante, 149; to take temporary possession of lands and roads, see ante, 202—206; as to the obligation to take the whole of a house, ante, 174; or small parcels of land, ante, 178; as to taking lands lying on the sea shore, ante, 171; as to lands lying over mines, ante, 171, 212. The company may also, in addition to the lands which they are authorized to take compulsorily, contract for the purchase of any land near the railway, not exceeding in the whole the prescribed number of acres, for extraordinary purposes, that is to say, for providing stations, yards, warehouses, roads, &c., ante, 169.

(*k*) As to how far this section applies to established companies, see *Weld v. London and South Western R. Co.*, ante, 179, note (*n*); 8 L. T. (N. S.) 13.

(*l*) A railway may be constructed upon the bed of a navigable river, according to deposited plans, but not so as to divert or alter the entire course of such a river, or to obstruct the whole navigation; and in such a case, as against the public, it is not incumbent on the company to show that they have purchased the soil of the portion of the bed of the river which is so used. *Abraham v. Great Northern R. Co.*, 20 L. J. (Q. B.) 322; 16 Q. B. 586. Building a bridge partly in the bed of a navigable river

is not necessarily a nuisance; it is a question for a jury. *R. v. Betts*, 16 Q. B. 1022. See further, *Mayor, &c. of Norwich v. Norfolk R. Co.*, 4 E. & B. 397. As to the construction of bridges over navigable tidal waters, see 26 & 27 Vict. c. 92, s. 14, post, Appendix.

(*m*) If a permanent tunnel be made, the company must purchase the land under the powers contained in the Lands Clauses Act, 8 & 9 Vict. c. 18. *Ramsden v. Manchester and Altrincham R. Co.*, 1 Exch. 723; ante, 188, n. (*n*); and see ante, 174, n. (*x*).

(*n*) See as to a temporary ballast line, *Shersby v. South-Eastern R. Co.*, 13 Jur. 689; and as to permanent diversion of road, *Phillipps v. London, Brighton, and South Coast R. Co.*, 4 Giff. 46.

(*o*) See *Sadd v. Maldon and Braintree R. Co.*, 6 Exch. 143; 20 L. J. (Exch.) 102.

(*p*) If an arch be made, the company must purchase the land under the Lands Clauses Act. *Pinchin v. London and Blackwall R. Co.*, 1 Kay & J. 34.

(*q*) See the cases as to temporary and other bridges, collected, post, 594; as to roads, 404.

(*r*) See a commentary on this part of this section, *Abraham v. Great Northern R. Co.*, 20 L. J. (Q. B.) 322; 16 Q. B. 586; post, 390.

(*s*) If a railway company divert a road,

*General Powers to
construct Railway
and Works.*

streets or ways, or raise or sink the level of any such rivers or streams, roads, streets or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper :

Drains, &c.

“ They may make drains or conduits into, through or under any lands adjoining the railway, for the purpose of conveying water from or to the railway (*t*) :

Warehouses, &c.

“ They may erect and construct such houses, warehouses, offices and other buildings, yards, stations (*u*), wharfs, engines, machinery, apparatus and other works and conveniences as they think proper :

Alterations and
repairs.

“ They may from time to time alter, repair or discontinue the before-mentioned works, or any of them, and substitute others in their stead ; and

General power.

“ They may do all other acts necessary for making; maintaining, altering or repairing (*x*) and using the railway :

Proviso as to
damages.

“ *Provided always* (*y*), that, in the exercise of the powers by this or the special act granted, the company shall do as little damage as can be (*z*), and shall make full satisfaction, &c. to all parties interested for all damage by them sustained by reason of the exercise of such powers ” (*a*).

It follows, that if a company carry on their works in such a way as to cause more damage than the necessity of the case requires, a court of equity will restrain them ; for, although the company are not to be prevented from doing anything which is necessary to the due prosecution of their undertaking, they may not, on the other hand, prosecute it in such a manner as to do unnecessary damage to others. Thus, where a railway company were proceeding to erect an arch over a mill-race, for the purpose of sustaining an embankment on which the railway was to be constructed, and it appeared that injury would be done to the mill if the arch were of the proposed dimensions, but that the injury would be avoided, if the arch were of certain larger dimensions, an injunction was granted to restrain the

*Coats v. Clarence
R. Co.*

and substitute a new one, the soil of the old road reverts to the owner discharged of the easement. *Marquis of Salisbury v. Great Northern R. Co.*, 28 L. J. (C. P.) 40.

(*t*) The Drainage Commissioners in Ireland are empowered to protect lands in Ireland, subject to floods, &c., from sustaining any injury by the formation of railway works. 8 & 9 Vict. c. 20, ss. 25—29, post, App. 80.

(*u*) See the cases as to the construction of stations, post, 411.

(*x*) See the cases relating to the liability of the company to repair the works after they are constructed, post, 411.

(*y*) This proviso does not control the pro-

visions in sect. 50 (post, 375), as to the rate of the ascent of a road, and other similar provisions in the act. The words used do not apply to what is done, but to the manner of doing it—the *modus operandi*; and compensation is to be made for the damage. *R. v. E. and W. India Docks, &c. R. Co.*, 22 L. J. (Q. B.) 380; 2 E. & B. 466.

(*z*) See post, 395.

(*a*) Therefore, parties injured must seek compensation, and cannot bring actions unless they sustain special damage, see sect. 55. *Watkins v. Great Northern R. Co.*, 16 Q. B. 961; post, 376, note (*e*). *Tanner v. South Wales R. Co.*, 5 E. & B. 618.

company from making over the mill-race an arch of less than certain specified dimensions (*b*). Similar injunctions have been granted in other cases, as we shall see hereafter.

General Powers to construct Railway and Works.

Indictment or information.

It is also settled that a railway company is amenable to indictment (*c*), or information at the instance of the Attorney-General (*d*), if their works are not made conformably to the powers contained in the statutes.

III. *Limitations of Powers in executing certain Engineering Works.*

The general powers conferred upon railway companies by the Railways Clauses Act are restrained by provisions requiring that certain engineering works connected with the railway shall be executed in a specified manner.

Limitations of general powers in executing engineering works.

Thus, by sect. 11, in making the railway, it is not lawful for the company to deviate from the levels of the railway as referred to the common datum line (*e*) described in the section approved of by Parliament, and as marked on the same, to any extent exceeding in any place five feet, or, in passing through a town, village, street or land continuously built upon (*f*), two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made (*g*), or, in case any street or public highway shall be affected by such deviation, then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or, if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gasworks or waterworks affected by such deviation: *provided always*, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway, as prescribed by act of Parliament, be left for roads, streets or canals passing under the same: *provided also*, that notice of every petty sessions to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required shall, fourteen days pre-

Deviations from datum line described in sections, &c.

8 & 9 Vict. c. 20, s. 11, App. 76.

(*b*) *Coats v. Clarence R. Co.*, 1 Russ. & M. 181; see also *Manser v. Northern and Eastern R. Co.*, 2 Railw. C. 380; post, 395.

(*c*) *R. v. Great North of England R. Co.*, 9 Q. B. 315. And see *R. v. Scott*, 3 Q. B. 543.

(*d*) See post, 376, note (*f*).

(*e*) See *North British R. Co. v. Tod*, ante, p. 357.

(*f*) See ante, 178, note (*i*).

(*g*) As to mandamus to company not to exceed their powers, see *R. v. E. and W. India Docks, &c. R. Co.*, 2 E. & B. 466.

*Limitations of
General Powers.*

8 & 9 Vict. c. 20.

*Public notice to
be given previous
to making greater
deviations.*

Sect. 12, App. 77.

vious to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed.

Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in any town, village, street or land continuously built upon (*g*), two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation; and it shall be lawful for the owner of any lands prejudicially affected thereby (*h*), at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and, by their certificate in writing, either to disallow the making of such deviation or to authorize the making thereof, either simply or with any such modification as shall seem proper to the Board of Trade; and, after any such certificate shall have been given by the Board of Trade, it shall not be lawful for the company to make such deviation, except in conformity with such certificate.

*Arches, viaducts,
and tunnels.*

Sect. 13.

So, with respect to arches, viaducts and tunnels, it is provided, that, where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly (*i*); and where a tunnel is marked on the said plan or section, as intended to be made at any place, the same shall be made accordingly (*j*), unless the owners, lessees and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made (*k*).

*Gradients and
curves.*

Sect. 14.

And, as to gradients and curves, tunnels or other engineering works, it is enacted, that it shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels or other engineer-

(*g*) See ante, 178, note (*i*).(*h*) See *Pearce v. Wycombe R. Co.*, 1 Drew. 244.(*i*) This means according to the deposited plan. Where, therefore, the deposited plan said the width of an arch was to be 45 feet, it was held that the company were bound not to make an arch of less width, notwithstanding section 49. *Attorney-General v. Tewkesbury and Malvern R. Co.*, 32 L. J.

(Ch.) 482; 1 De G. J. & Sm. 423; 8 L. T. (N. S.) 196, 682.

(*j*) This excludes the power to deviate to the extent of 100 yards, given under sect. 15. *Little v. Newport and Hereford R. Co.*, 22 L. J. (C. P.) 39; 12 C. B. 752; ante, 365.(*k*) And see further power to alter engineering works given by 26 & 27 Vict. c. 92, s. 4; ante, p. 366.

ing works (*l*) described in the said plan or section, except within the following limits and under the following conditions; (that is to say,)

*Limitations of
General Powers.*
8 & 9 Vict. c. 20.

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows; (that is to say,) in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid.

It shall be lawful for the company to diminish the radius of any curve described in the said plan, to any extent which shall leave a radius of not less than half a mile, or to any further extent authorized by such certificate as aforesaid from the Board of Trade.

It shall be lawful for the company to make a tunnel, not marked on the said plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorized by such certificate as aforesaid from the Board of Trade (*m*).

And with respect to the crossing of roads, or other interferences therewith, it is enacted, "that if the line of the railway cross any turnpike-road or public highway (*n*), then (except where otherwise provided by the special act (*o*)), either such road shall be carried over the railway (*p*), or the railway shall be carried over such road, by means of a bridge (*q*), of the height and width, and with the ascent or descent, by this or the special act in that behalf provided; and such bridge, with the immediate approaches, and all other necessary works

Crossing of roads.
Sect. 46, App. 84.

(*l*) This applies only to the line of the railway and not to cross roads. *R. v. Caledonian R. Co.*, 20 L. J. (Q. B.) 147; ante, 362; *Beardmer v. L. and N. W. R. Co.*, 1 Macn. & Gord. 112; ante, 361. And would include bridges; *Attorney-General v. Tewkesbury and Malvern R. Co.*, supra, note (*i*).

(*m*) Vide supra note (*k*).

(*n*) See post, 374, note (*t*).

(*o*) See *Warden, &c. of Dover Harbour v. London, Chatham and Dover R. Co.*, 30 L. J. (Ch.) 474, where it was held that a special act, which authorized the company to cross a road on a level, provided they made a bridge for foot passengers, was permissive and not compulsory, and an injunction to prevent their carrying the road over the railway by a bridge was refused.

(*p*) This section gives the company an

option of carrying the road over the railway, or the railway over the road, as they may think fit, without reference to the level of the line of the railway; and it seems also that the company may, under sect. 16, alter such works, after they have once exercised the option given by the above section. On this ground a writ of mandamus was held to be bad, which commanded a company to carry a road over a highway by means of a bridge, that being the only way in which, according to the level of the line of the railway at the time the writ was applied for, the road could be preserved. *South Eastern R. Co. v. R.*, 20 L. J. (Q. B.) 428; 17 Q. B. 485; 17 Jur. 901; 4 H. L. Cas. 471.

(*q*) See the cases as to the construction of bridges, collected, post, 394; as to the diversion of roads, 404.

*Limitations of
General Powers.*

on a level.

*Construction of
bridges over
roads.*8 & 9 Vict. c. 20,
s. 49, App. 84.

connected therewith, shall be executed, and at all times thereafter maintained (*r*) at the expense of the company: *provided always*, that with the consent of two or more justices in petty sessions, as after mentioned (*s*), it shall be lawful for the company to carry the railway across any highway other than a public carriage road on the level."

And every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special act) be built in conformity with the following regulations; (that is to say,)

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a turnpike-road (*t*), and of twenty-five feet if over a public carriage-road, and of twelve feet if over a private road (*u*):

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike-road, and fifteen feet for a space of ten feet if over a public carriage-road; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet:

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage-road:

The descent made in the road, in order to carry the same under the bridge, shall not be more than one foot in thirty feet, if the bridge be over a turnpike-road; one foot in twenty feet if over a public carriage-road; and one foot in sixteen feet if over a private carriage-road, not being a tramroad or railroad; or, if the same be a tramroad or railroad, the descent shall not be greater than the prescribed rate of inclination; and if no rate be prescribed, the same shall not be greater than as it existed at the passing of the special act.

(*r*) If the road is carried over the railway, this section imposes on the company the burden of the perpetual maintenance, not only of the fabric of the bridge and approaches, but of the roadway over the bridge and approaches. *North Staffordshire R. Co. v. Dale*, 8 E. & B. 836; 27 L. J. (M. C.) 147; *Leach v. North Staffordshire R. Co.*, 29 L. J. (M. C.) 151. But if the road is carried under the railway, the company are not bound to keep the road in repair. *Waterford and Limerick R. Co. v. Kearney*, 12 Ir. C. L. R. 224; *Fosberry v. Same Co.*, 13 Ir. C. L. R. 494; acc. *L. and N. W. R. Co. v. Skerton*, 33 L. J. (M. C.) 158.

(*s*) See post, p. 377.

(*t*) Vide supra, p. 372, note (*i*). A road on which toll gates are by law erected, and tolls taken thereat, is a turnpike road within the meaning of this section. *Northam Bridge and Roads Co. v. London and Southampton R.*

Co., 6 M. & W. 428; 1 Railw. C. 653; post, 403. The character of the road, with respect to the amount of traffic passing upon it, does not affect the question, whether it is a turnpike road within the meaning of the above section; therefore Fleet Street or the Strand, in London, would not fall within this provision, as a turnpike road. *R. v. E. and W. India Docks R. Co.*, 22 L. J. (Q. B.) 380; 2 E. & B. 466.

(*u*) These dimensions are to be taken irrespective of the footpaths at the sides of the roads. *R. v. Rigby*, 19 L. J. (Q. B.) 153; 14 Q. B. 687; post, 398. Where a company, by agreement with a land-owner, agreed to erect a suitable bridge over a street as then planned, and the street was 42 feet wide, it was held that the arch of the bridge must be of the same width. *Clarke v. Manchester, Sheffield and Lincolnshire R. Co.*, 1 Johns. & Hemm. 631.

And every bridge erected for carrying any road over the railway shall (except as otherwise provided by the special act) be built in conformity with the following regulations (*x*); (that is to say,)

*Limitations of
General Powers.*

Construction of
bridges over
railway.

8 & 9 Vict. c. 20,
s. 50, App. 85.

There shall be a good and sufficient fence on each side of the bridge of not less than four feet, and on each side of the immediate approaches of such bridge of not less than three feet: The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike-road, and twenty-five feet if a public carriage-road, and twelve feet if a private road:

The ascent shall not be more than one foot in thirty feet if the road be a turnpike-road (*y*); one foot in twenty feet if a public carriage-road; and one foot in sixteen feet if a private carriage-road, not being a tramroad or railroad; or, if the same be a tramroad or railroad, the ascent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed, the same shall not be greater than as it existed at the passing of the special act.

But it is *provided*, that, in all cases where the average available width for the passage of carriages of any existing roads, within fifty yards of the points of crossing the same, is less than the width hereinbefore prescribed for bridges under or over the railway, the width of such bridges need not be greater than such average available width of such roads; but so, nevertheless, that such bridges be not of less width, in the case of a turnpike-road or public carriage-road, than twenty feet: *provided also*, that, if at any time after the construction of the railway, the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width (*z*) of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or the maximum width herein or in the special act prescribed for a bridge in the like case over or under the railway.

Width of bridges
need not exceed
width of road in
certain cases.

Sect. 51.

It is also *provided*, that, if the mesne inclination of any road within 250 yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination hereinbefore required to be preserved by the company, then the company

Existing inclina-
tions of roads
crossed or divert-
ed need not be
improved.

Sect. 52.

(*x*) See the cases, post, 394. Where a special act required the company to strengthen an existing bridge pointed out in the plans, and the company took down the bridge and rebuilt it, it was held by Lord Cottenham, C., that they were justified

in doing so. *Wood v. North Staffordshire R. Co.*, 1 Macn. & Gord. 278; post, 402.

(*y*) See ante, 370, note (*y*).

(*z*) See *R. v. Rigby*, 19 L. J. (Q. B.) 153; 14 Q. B. 687; post, 398.

*Limitations of
General Powers.*

Before roads are
interfered with,
others must be
substituted.

8 & 9 Vict. c. 20,
s. 53, App. 85.

may carry any such road over or under the railway, or may construct such altered or substituted road, at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted (*a*).

If the company cross, raise, cut through, sink or use (*b*) any part of any road (*c*), public or private, so as to render it impassable for, or dangerous, or extraordinarily inconvenient to passengers or other persons, or carriages, they are required, before the commencement of any operations, to cause a sufficient road to be made, instead of the road to be interfered with, and to maintain such road; and, in default of making the substituted road, the company are liable to a heavy penalty, payable to the trustees, &c., if a public road, or, in case of a private road, to the owner (*d*); and any person sustaining special damage may maintain an action on the case (*e*): (Sects. 54, 55.) If the road interfered with as above mentioned can be restored compatibly with the formation and use of the railway, the company are required to restore it to as good a condition as the same was in at the time when the same was first interfered with, or as near thereto as may be; and if it cannot be restored, then the company are required to cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow (*f*); and the former road must be restored, or the substituted road provided, within a certain period, which is prescribed, otherwise a penalty is incurred: (Sects. 56, 57.) If the company use or interfere with (*g*) any road, they are required from time to time to repair and make good all damage done by them (*h*);

(*a*) See post, 399.

(*b*) As to diversion and alteration, see sect. 16, ante, p. 369; and *Marquis of Salisbury v. Great Northern R. Co.*, 28 L. J. (C. P.) 40.

(*c*) This means other than that which is the subject of the powers of the special act; therefore when a special act authorized the conversion of a tramroad into a railway, the company were held not bound by this section to substitute another road during the conversion. *Tanner v. South Wales R. Co.*, 5 E. & B. 618.

(*d*) A tenant of a farm is not an owner within this provision. *Collinson v. Newcastle and Darlington R. Co.*, 1 Car. & Kir. 546. See the interpretation clause, sect. 3; see also *Mann v. Great Southern and Western R. Co.*, 9 Ir. C. L. R. 105.

(*e*) Such an action cannot be maintained by one who has not sustained special damage; he must seek compensation under sect. 16. *Watkins v. Great Northern R. Co.*, 16 Q. B. 961; 20 L. J. (Q. B.) 391. Where

special damage is sustained, an action lies. *Tanner v. South Wales R. Co.*, 5 E. & B. 618.

(*f*) An information may be filed if this provision is disregarded. See where an injunction issued in such a case, *Attorney-General v. London and South Western R. Co.*, 3 De G. & S. 439; post, 405; *Attorney-General v. Great Northern R. Co.*, 4 De G. & S. 75; post, 406; or the company may be indicted, *R. v. Scott*, 3 Q. B. 543; post, 404.

(*g*) Where a railway company used roads by the carriage of stone and other materials over them for making the railway and works, and in the opinion of two justices thereby damaged the road, it was held by the Court of Queen's Bench that they were liable, under sect. 58, to make good the damage, although the materials were really conveyed in the carts of contractors and others employed by them. *West Riding and Grimsby R. Co. v. Wakefield Local Board of Health*, 33 L. J. (M. C.) 174.

(*h*) See the cases as to the diversion, &c. of roads, collected, post, 404.

and, in case of difference, two justices may decide the question in the manner prescribed (i): (Sect. 58.)

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We have seen (k) that by sect. 46 the company may, with the consent of two justices, carry the railway across any *highway other than a public carriage road* on the level. When it is intended to apply to the justices for such consent, fourteen days' public notice of such intended application must be given; and any party aggrieved by the determination of the justices may appeal to the sessions, who may finally determine the question and award costs (Sect. 60); and if the railway shall cross any highway other than a public carriage-way on the level, the company shall, at their own expense, make and at all times maintain (l) convenient ascents and descents, and other convenient approaches, with hand-rails or other fences, and shall, if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and, if the same shall be a footway, good and sufficient gates or stiles, on each side of the railway, where the highway shall communicate therewith: (Sect. 61.) If the company fail to do so, two justices, on application of the surveyor of roads, or two householders, may, after ten days' notice to the company, order them to execute such works under a penalty of 5*l.* a day, and the justices may apply the penalty in executing the works: (Sect. 62.) We shall hereafter see that the Board of Trade have certain powers where the railway crosses roads on a level (m).

Crossing highway
other than public
carriage road on a
level.

8 & 8 Vict. c. 20,
s. 59, App. 86.

Persons omitting to shut and fasten gates at the side of the railway are liable to a penalty of 40*s.* (n): (Sect. 75.) The act contains also two sections (47 and 48) (o), providing for cases in which the railway crosses a *turnpike road or public carriage road* on a level. Section 47 appears to be a substitution for previous statutory provisions (p), than which it is somewhat more extensive. But inasmuch as the crossing of such roads on a level is *in general* prohibited by sect. 46, it would seem that these provisions only apply to cases in

Crossing turnpike
or public carriage
road on a level.

(i) What is a good conviction under this section, see *L. and N. W. R. Co. v. Wetherall*, 20 L. J. (Q. B.) 337; 15 Jur. 247. Where a railway company pulled down a county bridge and erected another, and agreed with the trustees of a turnpike road to keep the approaches to the bridge in repair, which had been previously repaired by the county, and the road became out of repair, Wightman, J., refused to grant a mandamus calling upon the company to repair the road, as it was not a use of the road within 8 & 9 Vict. c. 20, s. 58. The proper course was for the trustees, if they were compelled to repair the road, to avail themselves of their remedy on the agreement. *Ex parte Exeter Road Trustees*, 16 Jur. 669.

(k) Ante, p. 373.

(l) See ante, p. 374, note (r).

(m) Post, p. 379, note (x).

(n) Where a railway company put up a gate across a public footway, which was also an occupation road, and locked it, and gave a key to the plaintiff, a landowner whose land was intersected by the railway; and, the key being lost through the negligence of the plaintiff or his servants, his cattle escaped on to the line and were injured, the company were held not liable. *Ellis v. London and South Western R. Co.*, 26 L. J. (Exch.) 349.

(o) See post, App. 84.

(p) See and consider *Manchester, Sheffield and Lincolnshire R. Co. v. Wallis*, 14 C. B. 220. See also *Fawcett v. York and North Midland R. Co.*, 16 Q. B. 610; 20 L. J. (Q. B.) 222.

*Limitations of
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which provision is made by a special act to allow such level crossing. It is therefore thought sufficient to refer generally to them in this place.

The Railways Clauses Act, 1863, also contains special provisions as to level crossings when authorized by a special act (*q*).

IV. *Construction of Accommodation Works.*Construction of
accommodation
works.

8 & 9 Vict. c. 20,
s. 68, App. 88.

The company are required by the Railways Clauses Act to make and at all times maintain (*r*) the following works (*s*), for the accommodation of the owners and occupiers of lands adjoining the railway (*t*): (that is to say,)

Gates, bridges,
&c.

Such and so many convenient gates, bridges, arches, culverts and passages over, under or by the sides of or leading to or from the railway, as shall be necessary for the purpose of *making good any interruptions caused by the railway* to the use of the lands through which the railway shall be made; and such works shall be made forthwith, after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof:

Fences.

Also sufficient posts, rails, hedges, ditches, mounds or other fences, for *separating* the land taken for the use of the railway *from the adjoining lands* not taken, and *protecting such lands* from trespass, or the cattle of the owners or occupiers thereof from straying thereout by reason of the railway (*u*), together

(*q*) 26 & 27 Vict. c. 92, s. 5—8, post, Appendix.

(*r*) See ante, p. 374, note (*r*). The cases relating to the repairing of railway works are collected, post.

(*s*) What are such accommodation works must be determined at the *time of the construction of the line*. They are such works as are required by necessity apparent on the surface, and do not apply to such as may be afterwards necessary by prospective working of mines. *R. v. Fisher*, 32 L. J. (M. C.) 12; 3 Best & S. 191. In *Earl of Darnley v. London, Chatham and Dover R. Co.*, 9 Jur. (N. S.) 148, an agreement had been entered into between the plaintiff and the company that the company should execute certain accommodation works "within one month after they should obtain possession of certain land agreed to be sold to them by the plaintiff." They had possession in December, but, in consequence of negotiations, no notification of the works required was given till March. It was held by Stuart, V. C., that time was of the essence of the contract, but was waived by the conduct of the company and

their agents, and he held the company bound to execute the works; but upon appeal the Lords Justices discharged his decree, with liberty to the plaintiff to amend his bill. 33 L. J. (Ch.) 9.

(*t*) The making of these accommodation works is a matter totally distinct and unconnected with assessing the value of the land. *Per Lord Cottenham, C., Skerratt v. North Staffordshire R. Co.*, 5 Railw. C. 178; and see *South Wales R. Co. v. Richards*, 18 L. J. (Q. B.) 310; 13 Q. B. 988; ante, 311.

(*u*) This section is plainly a substitution for 5 & 6 Vict. c. 55, s. 9. (See *per Jervis, C. J.*, as to sect. 10, in *Manchester, Sheffield and Lincolnshire R. Co. v. Wallis*, 14 C. B. 220; 23 L. J. (C. P.) 85.) The obligation cast upon the company by this section is the same as it would have been at common law, if they had been bound by prescription to repair the fences; in other words, they are only bound to keep up the fences against the cattle of the owners or occupiers of adjoining lands. If therefore cattle stray into a field adjoining the railway, or are there without the owner's consent, and thence get on to the railway and are injured, the com-

with all necessary gates (*x*), made to open towards such adjoining lands, and not towards the railway, and all necessary stiles; and such posts, rails and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be:

Construction of Accommodation Works.

8 & 9 Vict. c. 20, s. 68, App. 88.

Also all necessary arches, tunnels, culverts, *drains* or other passages, either over or under, or by the sides of the railway, of such dimensions as will be sufficient at all times *to convey the water as clearly from the lands lying near or affected by the railway, as before the making of the railway*, or as nearly so as may be; and such works shall be made from time to time as the railway works proceed (*y*):

Drains.

Also proper watering-places for cattle, where, by reason of the railway, the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering-places; and such watering-places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be; and the company shall make all necessary water-courses and drains for the purpose of conveying water to the said watering places (*z*):

Watering-places.

pany are not liable. *Ricketts v. East and West India Docks and R. Co.*, 12 C. B. 160; 21 L. J. (C. P.) 201; 16 Jur. 1072. So if cattle have strayed on to a highway, or are occupying the highway in a manner not according to the dedication of the owner of the soil, and get thence through an open gate or defective fence on to the railway and are injured, the company are not liable. *Manchester, Sheffield and Lincolnshire R. Co. v. Wallis*, 14 C. B. 213. But where a colt had strayed on to a highway, and whilst being driven home escaped into a railway yard and thence on to the line and was killed, the company were held liable, as the colt was lawfully using the highway. *Midland R. Co. v. Daykin*, 17 C. B. 126. The obligation imposed by this section does not apply if the adjoining land belongs to the company; if therefore, e. g., cattle are, by permission of the company, grazing, or on the slopes or embankments of the railway, or in a yard belonging to the company, and stray thence on to the line and get injured, the company would not be liable. *Marfell v. South Wales R. Co.*, 29 L. J. (C. P.) 315. And see *Roberts v. Great Western R. Co.*, 27 L. J. (C. P.) 266; 4 C. B. (N. S.) 506; *Hardcastle v. South Yorkshire R. Co.*, 28 L. J. (Exch.) 139; 4 H. & N. 67; *Hounsell v. Smyth*, 29 L. J. (C. P.) 203; 7 C. B. (N. S.) 731; *Binks v. South Yorkshire and River Don Co.*, 32 L. J. (Q. B.) 26. In *Sharrod v. L. and N. W. R. Co.*, 4 Exch. 580, 6 Railw. C. 239, it was held that an action against the company for

injuries sustained through neglect of the duties imposed by this section, must be in case, not trespass. As to the right of distraining damage feasant cattle which have strayed through defect of fences which distrainer was bound to repair, see *Singleton v. Williamson*, 7 H. & N. 410.

(*x*) And when a railway crosses a road used for carts or carriages, the company are required to make and maintain gates to fence in the railway at each end of the road, to prevent cattle or horses passing along the road from entering upon the railway while the gates are closed, and also to provide persons to open and shut such gates, which gates the Board of Trade may, if it is more conducive for the public safety, direct to be kept closed across the railway instead of across the ends of the road. 5 & 6 Vict. c. 55, s. 9, App. 11. See *Fawcett v. York and North Midland R. Co.*, 16 Q. B. 610; 20 L. J. (Q. B.) 222.

(*y*) Repairs of drains by the side of the railway, which, in consequence of sinking of soil caused by mining, are required to protect mines from percolation of water, are not "accommodation works," but the subject of an action. *R. v. Fisher*, ante, p. 378, note (*s*). Sections 68 and 69 do not apply to matters occurring beneath the surface. *Ibid*.

(*z*) See *R. v. York and North Midland R. Co.*, post, 426; and *North Midland R. Co. v. Milner*, 15 L. J. (Q. B.) 379; post, 427.

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Works.*8 & 9 Vict. c. 20,
s. 68, App. 88.

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation, instead of the making them.

If any difference arise as to the kind or number of the accommodation works, or as to maintaining them, the same may be determined by two justices (*a*) (Sect. 69); and if the company fail to obey the justices' order, the party aggrieved may execute the works or repairs himself, and the expenses shall be repaid by the company; and any dispute about the expenses shall be settled by two justices (*b*); but the railway must not be obstructed or injured for a longer time than is unavoidably necessary for the execution of the accommodation work: (Sect. 70.) If the owners or occupiers of lands consider the accommodation works insufficient for the commodious use of their lands, they may, at their own expense, make such further works as shall be agreed by the company, or, in case of difference, as shall be authorized by two justices: (Sect. 71.) But if the company so desire, all such last-mentioned accommodation works must be constructed under the superintendence of their engineer, subject to certain restrictions: (Sect. 72.) The company cannot be compelled to make further or additional accommodation works after the expiration of a prescribed period: (Sect. 73.) Until the company make bridges or other proper communications between lands intersected by the railway, the persons whose right of way shall be affected may pass and repass with carriages, &c., directly (but not otherwise) across the railway; but if compensation has been received for such communication in lieu thereof, then no right of way may be exercised (*c*): (Sect. 74.)

(*a*) It has been held in Ireland that the justices have not jurisdiction to decide whether or not there shall be accommodation works, but only on their kind, number and sufficiency. *R. v. Waterford and Limerick R. Co.*, 2 Ir. Law Rep. (N. S.) 580.

(*b*) These expenses are therefore not a legitimate subject of compensation, and if a sheriff's jury give anything in respect of them, that will be an excess of jurisdiction, vitiating perhaps the whole of their proceedings. *R. v. South Wales R. Co.*, 13 Q. B. 988.

(*c*) As to what amounts to a receipt of compensation for the loss of communication between several portions of an estate, see *Manning v. Eastern Counties R. Co.*, 12 M. & W. 237; 3 Railw. C. 637. A railway act enacted, "that it should be lawful for the owners and occupiers of lands through which the railway shall be made (except in

cases in which the company shall, at their own expense, have made communications from the land on the one side of the railway to the land on the other, according to an agreement with the owner, &c., or according to the provisions of this act), at all times, for the purpose of occupying the same lands, to pass and repass, and to lead horses, cattle, &c. directly over and across such parts of the railway as shall be made in or upon their lands." By another section it was provided, that the company should, at their own expense, so soon as the railway shall be laid out and formed, make such communications as two or more justices of the peace shall, upon the application of the owners, &c. (in case of any dispute), judge necessary and appoint. Another section prohibited any person from riding, leading, or driving any horse, &c. upon the railway, "except only in directly crossing the same

If any person omit to fasten any gate set up on either side of the railway for accommodation, he is liable to a penalty: (Sect. 75.)

Construction of Accommodation Works.

If the commissioners of a turnpike-road, or the surveyor of any highway, apprehend danger to the passengers on such road, in consequence of horses being frightened by the engines on the railway, application may be made to the Board of Trade, who may certify what works are necessary or proper for the purpose of obviating or lessening the danger (Sect. 63); and the company must make any screen or other work in pursuance of the certificate, or pay a penalty; and the justices who impose the penalty may order it to be applied in executing the work in respect whereof the penalty was incurred: (Sect. 64.) So the Board of Trade may dispense with a strict compliance of the statute in regard to the construction of certain public works of an engineering nature: (Sect. 66.)

8 & 9 Vict. c. 20, s. 63, App. 87.

Screens.

The company, for the purpose of making the railway, may alter the position of water-pipes, gas-pipes and other obstructions, under the restrictions and penalties prescribed by the act (Sects. 18, 19, 20, 22, 23), making good all damage, and paying compensation: (Sect. 21.)

Interference with water-pipes, gas-pipes, &c.

The foregoing are the principal provisions contained in the Railways Clauses Consolidation Act, as to the mode of constructing the railway, and the works connected therewith. The authority of the Board of Trade to sanction deviations in executing certain of the before-mentioned engineering works connected with the railway will be treated of in a subsequent part of this work (*d*). It now only remains to state in some detail such decided cases as appear to be calculated further to illustrate the subjects we have been considering. They are arranged as follows (*e*):—

Cases relating to the construction of the railway and stations; and over what lands, and at what levels, the railway may be made.

Cases relating to the construction of bridges.

Cases relating to the diversion, &c. of roads.

Cases relating to the repair of railway works.

as aforesaid, at places *to be appointed* for that purpose, for the necessary occupation of the respective lands through which the railway shall pass." It was decided that, until the company had made a communication, a party whose land had been severed by the railway had a right to pass from his property on one side of the railway to the other, at any point; and that the words "to be appointed" must be read with the addition of "when such places shall have been appointed." *Grand Junction R. Co. v. White*, 2 Railw. C. 559.

(*d*) Post, Chap. IX.

(*e*) As the cases are necessarily abbreviated, the remarks made ante, p. 42, note (*k*), are again suggested. The Editor has not been able consistently with the original plan of this work to shorten the following collection of cases more than he has done. The subsequent cases on the subjects to which they refer have either been already given in the notes to the different sections of the acts, or, where of sufficient importance, in the text; or else are given in the notes to the following cases.

Construction of
Accommodation
Works.

Cases relating to the liabilities of the company, and their contractors, for injuries arising from negligence during the construction of the works.

Other cases not included in the foregoing subjects.

V. *Cases relating to Construction of Railway and Works, and over what Lands, and at what Levels, the same may be made.*

If a tunnel be marked on the plan, the line cannot be deviated at that point, but the tunnel must be made on the prescribed spot (g).

Little v. Newport and Hereford R. Co. (f). The question was, whether on a line of railway, the company could properly deviate within the limits of deviation, where a tunnel was shown upon the deposited plans.

Jervis, C. J.—I am of opinion that the company cannot deviate where a tunnel is shown. In the reason and sense of this question there is nothing to be said against the construction which the words plainly warrant, because the viaduct, arches and tunnels which are mentioned in the 13th section, and in respect of which there is a specific restriction in the 14th section, are matters of great importance both to the public, as matters of security, and to proprietors in respect of the accommodation of their land, and could not be expected to be made the subject of provisions, in a railway clauses act applicable to all railways, but should be specifically provided for, by contract between the parties, or, if there should be no contract, by legislative provisions, embodied in the special act of Parliament. Therefore in any place where a tunnel was delineated on a plan, it might be consistent with the provisions of the general act, that where a tunnel was originally shown, the special act of Parliament should contain a provision, either to transpose the tunnel if the company deviate, or not to make a tunnel. There is nothing in the act of Parliament, or in the subject-matter with which the act of Parliament deals, which calls for a construction, other than that which is warranted by the exact words of the act of Parliament, because the act is not intended to be a governing act for all railways; it is the basis of a general enactment, to be qualified and limited by a special act of Parliament in each separate case. That being so, we are bound to put such a construction upon the words as they may fairly warrant; we are not bound to strain or vary the meaning of the words. The 13th section is remarkable with respect to the matter, as drawing a distinction between viaducts and works of that sort and tunnels; for it provides, that a tunnel can be dispensed with by consent, whereas a viaduct cannot, according to the legislative meaning of the words. In substance, it provides that where a tunnel is marked on the plan or section as intended to be made at any place, the same shall be made accordingly; and the fair liberal meaning of that is, that where, on the line a tunnel is shown, there, at that place where it is shown, the tunnel shall be made, not within the limits of the line of deviation, but at that place the tunnel shall be made; and if a viaduct is shown on the plan, it shall be made where the viaduct is shown. That this is the meaning of the 13th section, no one who reads the 14th section according to the fair meaning of the words can very much doubt, for it says, it shall not be lawful for the company to deviate or alter a tunnel shown, unless in particular cases, which do not comprehend the case in question. Can any one doubt that a man substantially does deviate as much in the tunnel as he does in the line, if he deviates ninety feet or ninety yards? and certainly a person alters the tunnel, if he does not put it in the

(f) 12 C. B. 752; 22 L. J. (C. P.) 39; 17 Jur. 209.

(g) See as to railways authorized by spe-

cial acts passed after 28th July, 1863, 26 & 27 Vict. c. 92, s. 4, post, App.

place A, but puts it on the side, at place B. It is not then the same tunnel. I think, therefore, it is plain that when there is a tunnel, and where it is shown on the plan at a certain place, there the tunnel must be made, and there must be no deviation or alteration in the position of the tunnel. If that is so, the 15th section must be read with the 13th section: "It shall be lawful for the company to deviate from the line delineated on the plan deposited, within certain limits, except where on the line a tunnel is shown on that plan, and then the tunnel shall be made in that place." If that be so, the 13th, 14th and 15th sections together make a comprehensive and intelligible system, providing that where viaducts or tunnels are shown, there, in that place, they shall be put and not varied or altered; but with that exception, the line may deviate one hundred yards, according to the deviating line shown on the plan. There is no hardship on the company in this. There is no hardship on the landowner; it gives him the exact thing shown on the plan. Both parties, therefore, are justly protected, and no injustice is done; and it seems to me the words of the act of Parliament compel us to arrive at that conclusion. The result is, that the verdict must be entered for the defendants.

Maule, J.—It is to be observed, with respect to the act of Victoria, that it does not profess to make provisions applicable to the construction of all railways, in all respects, and upon every occasion. That would have been impossible, because railways not belonging to a class of immutable things, but each having its own local peculiarities, must require their own individual legislative privileges, and there must necessarily be provisions arising out of their local circumstances which could not, by possibility, be made the subject of general provision. But notwithstanding that this is so, there are many matters relating to railways which are common to almost all railways; and, with respect to such matters, the act of Parliament would seem to be a salutary one in two respects. It shortens the length of the special acts for particular railways, and in furnishing, by way of reference, well understood provisions, applicable to such cases, it lessens the trouble and expense of preparing these acts of Parliament, and by conferring, as far as it is applied, uniformity on them, it makes the decisions that have taken place with respect to one railway applicable with respect to another, which is a great advantage, as it makes the law clear and intelligible. Otherwise, if special provisions were to be carried into effect, by special words in each act, distinctions would be taken, and questions would arise upon each act of Parliament, whether the words were absolutely equivalent, not being quite the same in this act and in others. Questions of that kind are very unsatisfactory and injurious to the administration of justice, and they are prevented by the scope and policy of this act of Parliament, which I think a beneficial one. The effect of that scope is to leave things, fit for local provision, subject to local provision. Now, with respect to tunnels and engineering works generally, it is quite evident that they are fit for such provisions, and any variation or alteration of them that may be required from what is proposed and shown to the public, is a matter almost impossible to be determined by general regulation, and is eminently fit to be the subject of local provision in the special act of Parliament. Accordingly, the general principles laid down, if one chooses to adopt them, are very plain and simple. It is said, in section 13, that where a tunnel is shown upon the plan, it must be made accordingly. It seems, I think, plain enough, that where on a line of railway a tunnel is laid down, you must make the tunnel there. Section 15 throws light on that if it was wanted. It is remarkable how section 14 should escape notice in the matter, for section 14 says, that no engineering work shall be altered or deviated from, except under certain circumstances, which are mentioned, and are of frequent occurrence, and which do not comprehend the case in question. The words have been tried by torture, and I do not think with any degree of success. They have

*Cases.**Construction of
Railway and
Works.**Little v. Newport
and Hereford
R. Co.*

Cases.Construction of
Railway and
Works.*Little v. Newport
and Hereford
R. Co.*

come out of the rack to which they were exposed, with their natural dimensions and force, and they express what they did express before the attempt at twisting them. Section 14 enacts, that where there is an engineering work, such as a tunnel, there shall be no alterations made as to its position, unless the parties choose to provide for it in the special act of Parliament. If they do, they shall provide for something which is applicable in that particular place, to that particular tunnel, and which they well know, but which it would be impossible, without provisions of enormous length and detail, to provide for by the general act. Giving that meaning to the words, it is very clear that if such power of deviating applies to the line as is mentioned in section 15, it would be entirely contradictory to sections 13 and 14, with respect to engineering works, unless you understood that it did not comprehend engineering works. If that is so, as there is no express provision in the local act, the parties must be taken—the company on the one hand and the public on the other—to be satisfied with respect to the tunnels and engineering works, that the company should be bound to make them, as they had laid them down in the original line.

When lands beyond the limits of deviation may be taken for the purposes of a station.

Crauford v. Chester and Holyhead R. Co. (h).—Upon a motion to dissolve an injunction which had been issued, to prevent defendants from taking plaintiff's lands for the purposes of a railway, it appeared that on the plans and in the books of reference deposited by the company, plaintiff's land was marked No. 1 and No. 4, and the line of deviation passed through both lots, leaving part of each outside the line or limit of deviation; and the company served plaintiff with notice, that they required the whole of lots 1 and 4, for the purposes of their acts. Plaintiff, conceiving that the company had no powers to take any land beyond the limits of deviation, declined giving the company possession of those parts beyond the line of deviation. The company thereupon proceeded to take possession thereof, under the compulsory powers of the act, and commenced making a station thereon. Plaintiff thereupon obtained an injunction, to restrain the company from taking or entering upon such parts of his lands as were not within the limits of deviation in the plan deposited. The *Vice-Chancellor* of England, upon motion, dissolved the injunction. His Honor said, the real question is, whether, attending to the language of the special act, and the paper representing the position of the line deposited with the clerk of the peace, the company have a right to take the whole of the lands with regard to the line of limits of deviation. The act takes notice of a former act, and that it is for the local advantage of the neighbourhood of Chester, that the company should be authorized to extend the line, and construct a new station there. Then the 4th section enacts, that whereas plans and sections for the extension of the said railway, and of the proposed new station, &c., have been deposited with the clerk of the peace, the company shall be at liberty to take lands, &c. Now, I must take it for granted that the legislature considered this special question, whether it might not happen that the line should be altered, so that the whole land specified in the plan might be required to build their station, on the lands marked out on the plans deposited. It appears to me that the legislature thought that right, and they say in this sentence—"It shall be lawful for the company, subject to the powers of deviation in the said Railways Clauses Consolidation Act, to make and amend the said extension, and the said station, and the works connected therewith, in the lines and upon the lands delineated upon the said plans, and described in the said books of reference, and to enter upon, and take and use such of the said lands as shall be necessary for the purpose." This is most singular language, because it speaks

originally of the things separately, and by distinct language; but here a notion of combination seemed to have pervaded the minds of those who framed the act. I think you must use your common sense, and see whether the difficulties have not arisen merely from the legislature using consolidating language. Why, if they had said it shall be lawful for them to make and maintain the same station, then there would not have been any doubt. I cannot but think that, inasmuch as the plans show where the station should be placed, it was the intention of the legislature to empower the company to make it on the whole of the land, without attention to the limits of deviation at all. Injunction dissolved.

Cases.

*Construction of
Railway and
Works.*

*Crauford v. Ches-
ter and Holyhead
R. Co.*

Cotter v. Midland R. Co. (i).—Motion to dissolve an injunction granted by Wigram, V. C., to restrain defendants from proceeding to assess the amount of compensation to be paid for a piece of land, which was used by the plaintiff as a rope-walk, on which there were several cottages. By the act the company were empowered to make a certain line of railway, including an extension of the main line to the High Orchard Basin at Gloucester; and it was for the purpose of that extension, and the works connected with it, that the land in question was required. The maps and plans deposited showed that two small portions only of the land, at the northern and southern extremities, were wanted for the extension line itself; but the whole was numbered, and the company insisted that the rest was necessary for other purposes, and, amongst others, for the erection of a new station, or an addition to the old one, at the terminus of the original line; and also for sidings on which the waggons employed in the conveyance of goods from the terminus to the basin might wait until there was a sufficient number of them to form a train.

When lands may
be taken to con-
struct a station
beyond the lines
of deviation.

*Cotter v. Midland
R. Co.*

Lord Cottenham, C.—The question between these parties is very simple. The piece of land sought to be taken from the plaintiff by the company is described in the map, plan and book of reference deposited with the clerk of the peace; and the act of the company, after describing the line of railway, authorizes the company to make and maintain the railway and works thereby authorized, in the line, and in the manner after provided; and, after reciting the deposit of the plan, section, and books of reference, authorizes the company to make and maintain the railway and works, in the line and upon the lands delineated upon the said plans, and described in the said book of reference, and to enter upon, take and use such of the said lands as shall be necessary for such purpose.

The plaintiffs do not dispute the right of the defendants to take so much of this piece of land as may be required for forming the line of railway, but deny their right to take any part which exceeds what is wanted for that purpose, although required by the company for the purposes of the railway, in forming or enlarging a station, and in forming places for carriages to collect and wait till the trains are ready to start, no part of which, they contend, is authorized by the act: and that is the whole question; which must be decided by the words of the act, with the interpretation of such words, either in the interpretation clause or by the provisions of the act, or of the Railways Clauses Consolidation Act.

The authority is, to take and use so much of the land in question as shall be necessary for the purpose of making and maintaining the said railway and works.

The Railways Clauses Consolidation Act, in the 3rd section, declares that the expression "railway" shall mean the railway and works by the special act authorized to be constructed. [His lordship read the 16th and 45th sections of the same act.]

There are no more distinct provisions in the special act, or in the Railways Clauses Consolidation Act, authorizing the formation of stations or other buildings and con-

(i) 2 Phil. 469; 5 Railw. C. 187.

Cases.Construction of
Railway and
Works.*Cotter v. Midland
R. Co.*

conveniences, which are essential to the working of all railways; and if these provisions do not include such a power, Parliament has authorized the extension of the railway in a manner likely to produce a great increase of traffic, without any power to make those arrangements, which such additional traffic will render indispensable. It seems to me, however, sufficiently clear that these provisions do include ample power for these purposes. The term "railway" by itself includes all works authorized to be constructed; and for the purpose of constructing the railway, the company are authorized to construct such stations and other works as they may think proper; and assuming that the lands authorized to be compulsorily taken would be taken and used for all ordinary stations and works, the act provides that, for extraordinary purposes, such as additional stations and conveniences, this railway may purchase certain additional quantities of land. I consider that all land, authorized to be taken, as necessary, in the terms of the act, for the purpose of making and maintaining the railway and works, is liable to be so taken, whether necessary for the actual line of the railway, or for stations or other conveniences necessary for the working of the railway; and the purposes for which the plaintiff's land is proposed to be applied clearly fall within that description.

Such, indeed, appears to have been the construction assumed and adopted in several cases. If, in *Eton College v. Great Western R.*, and *Lord Petre v. Eastern Counties R. (k)*, the company could not have formed stations without special authority, what was the necessity of introducing special prohibitions, and why were the judgments of the courts confined to such special prohibitions, when, according to the plaintiff's argument, the companies would, for want of special authority, have been incompetent to construct such stations? The motion for the injunction must be refused with costs.

When lands may be taken for buildings, although the deposited plan showed that the lands were required for other purposes.

Richards v. Scarborough Public Market Co.

Richards v. Scarborough Public Market Co. (l).—A market company obtained a special act, which recited that a convenient site for a market-house might be obtained, between certain streets on the east, and certain other streets on the west; and after incorporating the Market and Fairs Clauses Act, by sect. 24 authorized the erection of a market-house on land described in the deposited plans; and by sect. 25, the company were enabled to alter and widen streets, in the way pointed out on the deposited plans; and by sect. 30, to buy additional lands, not exceeding two acres. Plaintiff was the owner of a shop and premises on the west side of the street, precisely opposite to the entrance of the intended market-house. The whole of plaintiff's premises was numbered and delineated on the parliamentary plan deposited with the clerk of the peace; but it did not appear from the plan that any part of plaintiff's lands were intended to be built upon, or used by the company, except such part as was required for the purpose of widening the street. The company gave notice to plaintiff that they required the whole of his land for the purposes of their act; and subsequently issued their warrant to the sheriff to assess the value in the usual manner, in order that they might take it compulsorily. It was alleged that the intention of the company was to build two market-houses, one on each side of the street. The plaintiff thereupon obtained an injunction, Sir *J. Romilly*, M. R., being clearly of opinion that the statute did not authorize the company to take the whole of the plaintiff's premises (m). But, upon appeal, the injunction was dissolved.

Sir *Knight Bruce*, L. J.—The plaintiff says that the company are not entitled to take his land, and that if they are strictly entitled to take it, they intend to apply it for purposes not authorized by the act. The company were authorized

(k) Post, 387.

(l) 23 L. J. (Ch.) 110.

(m) See this judgment, 23 L. J. (Ch.) 113, note (2).

to take the ground for erecting a market-house, stalls, and slaughter-houses, mentioned in the book of reference. It is manifest that the plaintiff's land may be wanted, because it is included in the plan; and it is probable that it may still be wanted for the purposes of the act. There is no reason to suppose the company intended to use the plaintiff's land for any foreign purpose. As to the term "market-house," the General Market Clauses Consolidation Act says, that "the singular may mean plural unless repugnant." It is not uncommon, for part of a market to be under roof, and a part not under it, but still one market. The plan, it has been said, shows that the market-house should be only on the east of the street, and, therefore, it cannot be made on the west; and the recital in the act has also been relied on. As to the first, the reference to the general act is an answer; and as to the recital, the enactments are not so limited; and here there is no necessity to refer to the recital to explain the general intention. Unless such a course be necessary, it is not warranted. Here, the true construction of the act needs no such aid, and the act cannot be restricted by the recital. The plaintiff has failed in establishing that the company are attempting to take his land for foreign purposes, and the defendants may go on with their works.

Sir G. Turner, L. J.—I also am of opinion that this injunction must be dissolved. By the act of Parliament, the company have power to make such buildings, shops, &c., upon any of the lands, as they may think proper, and they are to be the proper judges of what is necessary. We must discharge the order, and dissolve the injunction.

Eton College v. Great Western R. Co. (n).—A bill for the formation of a railway was pending in the Lords. In consequence of a petition presented by Eton College the following clauses were introduced:—Sect. 99, that it should not be lawful for the company to alter or divert any part of the line of railway as then laid down, nor to make any other railway, tramroad or other road or way to the south of the line, within three miles of Eton. Sect. 100, that it should not be lawful for any company or person to form, make or lay down any branch railway or tramroad, or other road or way whatever, passing or approaching within the same limits. Sect. 101, that no depot, station, yard, waiting, watering, loading or unloading place should be made within the same distance. Sects. 102 and 104, that the company should erect and maintain a fence on each side of the railway, within certain parishes, for a distance of four miles; and should maintain a police for preventing all access to the railway by the scholars of Eton. The company diverted an existing road within the prescribed distance, and fenced off and appropriated part of the site of such former road as a passage communicating with the railway, by which passengers were invited to pass on foot to and from and to be taken up and set down by the trains stopping at the end of such passage. They also hired two rooms in a public-house, erected at the entrance of such passage, and the same were used as a booking-office and waiting-place, in the same manner as the station-houses of the company were used.

Shadwell, V.-C., decided, that the act did not prohibit the company from taking up and setting down passengers at that place, and his judgment was affirmed, on appeal, by Lord Cottenham, C., who was also of opinion that there was no parliamentary contract between the parties, and that the company were entitled to exercise the powers given by the act, in any manner not therein prohibited; that the passage was not a road within the 100th section; and that the house was not a station or waiting-place within the 101st section.

(n) 1 Railw. C. 200. See also *Lord Petre v. Eastern Counties R. Co.*, 3 Railw. C. 367, where the same point was decided.

Cases.

*Construction of
Railway and
Works.*

*Richards v. Scarborough Public
Market Co.*

Although a railway act prohibits the company from having "a station or waiting-place" at a certain place, the company are not prohibited from taking up and setting down passengers at that place.

What is a "road" within the meaning of a railway act.

Eton College v. Great Western R. Co.

Cases.

*Construction of
Railway and
Works.*

Meaning of the words "public station or other buildings."

Gordon v. Cheltenham and G. W. R. Co.

Gordon v. Cheltenham and Great Western Union R. Co. (o).]—A railway act enacted "that it should not be lawful for the company to make or establish any public station, yards, wharfs, waiting, loading or unloading places, warehouses or other buildings and conveniences for the depositing, receiving, loading or keeping any passengers or cattle, or any goods, articles, matters or things upon the estate of G., or within fifty yards of the boundaries thereof." G. filed a bill to restrain the company from using an engine-house and other buildings erected by them within the prescribed limits:—Held, by the *Master of the Rolls*, that the word "public" did not necessarily override the whole sentence; and that, if it did, everything connected with the railway must be considered as for the public use; and the injunction was granted, but with liberty to apply for a rehearing, or to prosecute an appeal to the House of Lords.

Where land was sold to a railway company upon condition that "the whole of the land should be appropriated to and solely for the purposes of the railway and the buildings connected therewith:—Held, that it was no breach of the condition to erect a building used chiefly by the passengers on the railway, with a room appropriated as a custom house, to which persons not travelling by the railway occasionally resorted.

Warden of Dover Harbour v. South-Eastern R. Co.

Warden of Dover Harbour v. South-Eastern R. Co. (p).]—Injunction to restrain defendants from using a building as a custom-house, and for the accommodation of their passengers. It appeared that defendants' act contained a clause "that no erection or building should be made without the consent of plaintiffs, or their surveyor, on certain land conveyed by them to the company, exceeding the respective heights therein specified;" and by sect. 15, "that the whole of the land to be sold by plaintiff to the company should be appropriated to and used solely for the purposes of the railway and the buildings connected therewith, except such part as might be required by the Board of Ordnance, or might be necessary to be left open for the increased width of the streets to form the necessary approaches to the railway station: provided always, that the said ground should not be used or employed for building or erecting thereon any coke ovens, or for any other purposes (the necessary railway purposes only excepted), by which any nuisance might be created or the other property of the plaintiff in any way damaged. Plaintiff's bill stated that the company erected the present building, and that one part of it was used as a custom-house for examining the luggage of passengers, collecting duties, granting certificates to aliens, &c.; that the upper floors of the building were laid out and intended to be used as bed-rooms in connection with an hotel erected by the company, on ground held by them on lease, and which, if so used, would be to the injury of plaintiff's property, consisting of several hotels in Dover, and to prevent which injury the stipulation in the above act had been inserted.

Sir G. Turner, V.-C.—This question wholly depends on the 15th section of the act. Now what are the purposes and object of that section? I think the primary object is the laying out of the land purchased by the company, and I think so for this reason: the words of the clause are not that the whole of the land or ground to be sold to the company, and the buildings thereon, shall be appropriated to and used solely for the purposes of the railway, but that the land or ground to be sold shall be appropriated solely to and for the purposes of the railway and the buildings connected therewith. It is, therefore, the use of the land and ground at which the clause properly looks; and, on the second branch of the clause, I think the same view arises. It is "except such part or portion thereof as may be required by the Board of Ordnance, &c." Still looking, not to the use of the buildings to be erected on the land, but to the mode in which the land is to be laid out or applied. The proviso seems to bear the same construction. Looking at this clause, with that view, I think that this question really depends upon the narrow words which are contained in the clause, "and the buildings connected therewith:" and the first question is, what is the principle to be applied to the construction of this clause? This is a purchase, in effect a deed of conveyance under a parliamentary power, to sell to a

party as owner in fee; and, therefore, every sound construction requires that the restriction which is imposed upon the owner in fee shall not be enlarged or extended beyond its necessary limits. What is the meaning, then, of the words "buildings connected therewith." I quite agree with the construction that "connected therewith" means connected with the railway; and there are three meanings which may be attached to those words. They may mean locally connected with the railway; or connected with the railway in the sense in which other buildings are connected with other railways, or connected with the railway as buildings applicable to that particular railway. I concur with the plaintiff's argument upon that point, that they do not mean locally connected with the railway. Do they then mean buildings connected with this railway, in the same sense as other buildings connected with other railways? I do not think that that limited construction can be put on them. I think this must be read "for the purposes of the said railway and the buildings connected with such particular railway." It follows to be considered what is, within the language of this clause, properly a building connected with the particular railway. I really do not know what construction can be put upon, or what meaning can be attached to, the words, "buildings connected with the railway," unless it be buildings which are used in some portion, or in some sense, for the purposes of the railway. How, then, does the case stand with reference to these buildings being or not being used for the purposes of the railway? Why the fact, so far as it relates to the custom-house, is, that one of the rooms is exclusively appropriated for the use of the custom-house. But by the side of that room there is another room, in which the passengers wait, whilst their luggage is being examined by the custom-house officers; and on the other side there is another room, into which the luggage, after it has been examined, is passed from the centre room, and then the luggage is separated by the town porters, and it is handed over a rail to porters who carry it, either to the railway or to any other place. Now is that building, so used, connected with the railway? It is a building which, to some extent at least, is used for the purposes of the railway. Can I then say that a building which is, to a certain extent, used for the purposes of the railway, is not to be considered as a building connected with the railway, because other purposes are added to the use of it, and because in that building are examined, not merely the luggage of passengers who pass along the railway, but the luggage of other persons who may not leave Dover, or who may go to hotels in the town? I do not think it is a fair and reasonable construction to hold, that because a building is used, and principally used, for the purpose of examining the luggage of passengers coming from abroad, and passing along the railway, it therefore follows that it is not a building used for the purposes connected with the railway. I think, that being the primary purpose, I should not be justified in holding this use of the building to be such as the act of Parliament does not authorize. As to the bed-rooms, I think the same argument that applies to the one applies also to the other. I am not prepared to say that there may not, hereafter, be such a use of these bed-rooms as would induce this court to interfere; but as the case at present stands there is no evidence before me, that there is any intention to use them for any such purposes as would warrant me in holding that the building is not, *bonâ fide*, intended to be used, and to be considered as a building connected with the railway.—Injunction refused.

*Cases.**Construction of Railway and Works.**Warden of Dover Harbour v. South-Eastern R. Co.*

Attorney-General v. Eastern Counties R. Co. (q).—By a local act, paving commissioners were empowered to remove obstructions from houses and buildings abutting near any streets which, in their judgments, should obstruct the circulation of light or air, or be inconvenient to passengers. An act, establishing the N. and

Construction of powers given to arch over streets for the purpose of building a station.

(q) 2 Railw. C. 823; 10 M. & W. 263; 12 L. J. (Exch.) 106.

Cases.Construction of
Railway and
Works.*Attorney-General
v. Eastern Coun-
ties R. Co.*

E. R. Co., empowered them to construct arches over the railway or other works, streets, &c., and upon the railway, or any lands adjoining or near thereto, to erect stations. By another act the company were empowered to provide a station and depôt near the London terminus of the railway; and all the "clauses, powers, provisions, directions, regulations," &c., contained in the former act, should apply to the purchase of land and buildings for the railway, and also for the station, and nothing in that act should extend to prejudice, derogate from, &c., the privileges of any parish over which the said railroad shall pass, under local acts of Parliament.

The railway company having arched over a street for the purpose of building a station, the *Lord Chancellor* directed a case to be sent to the Court of Exchequer. The following certificate was sent to the Court of Chancery:—"We are of opinion, that the N. and E. R. Co. were entitled, if it was necessary or reasonably convenient for the construction of a station and proper warehouses, to construct and make coverings or buildings, by arches or otherwise, over the public streets mentioned in the case, in like manner as they were entitled to do for the construction of the railway itself; and that by their last act of Parliament, they were expressly authorized to construct such station and warehouses at or near High-street, Shore-ditch."

A railway may be constructed along a navigable river according to deposited plans: and upon an action for the obstruction, brought by persons accustomed to navigate the river, it is not incumbent on the company to show, that they have purchased the portion of the bed of the river, used for the railway, from the owner.

*Abraham v. Great
Northern R. Co.*

Abraham v. Great Northern R. Co. (r).]—Action on the case by owners of vessels navigating the Ouse. The declaration charged defendants with filling up and obstructing part of the bed of that river, penning back water, and preventing it flowing in its accustomed channel, and preventing plaintiffs from navigating that part of the river. Defendants pleaded that they had done the things complained of under the special and consolidated acts for making their railway; that plans and books of reference were deposited with the clerk of the peace; that the part of the bed of the river which was obstructed was among the lands delineated in the plans, and described in the books of reference, and that the works done were necessary for the purpose of making the railway. Upon the trial, before *Patteson, J.*, it was contended, that under this plea defendants were bound, not only to show that the part of the river obstructed was in the plans and books of reference, and was used for the necessary construction of the railway; but also that all notices required by the acts for the purchase of such part of the river, from the owners of the bed of it, had been given, and all other things done, which were requisite to vest that part of the bed of the river in the company. The judge told the jury that the allegations in the plea did not make such proof necessary, and they found a verdict for defendants. A rule for a new trial was afterwards obtained; also for judgment non obstante veredicto, on the ground that if the judge was right in his construction of the plea, the plea was bad for the want of averments, that those various acts had been done, which, it has been insisted, ought to have been proved; and further upon the ground, that none of the acts of Parliament authorized the company to construct their railway upon the bed of the navigable part of the river.

Patteson, J.—We are of opinion that the learned judge was right in the construction which he put upon the plea: and therefore that there is no ground for granting a new trial. With respect to judgment non obstante veredicto, we are of opinion that, as against the plaintiffs, who have no interest in the soil of the bed of the river, but have only the right of passage on the navigable highway, common to all the Queen's subjects, it was not necessary for the defendants to aver and prove, that they had taken the proper steps to vest in them the ownership of the bed of the river. If they were entitled by the acts of Parliament to convert a portion of the navigable river into a railway, and so to obstruct and do away with

a portion of the navigable channel, it cannot be material to the public at large, or to those persons who were in the habit of navigating that portion, whether the ownership of the bed of the river in that portion has been effectually transferred, or whether any one entitled to compensation in respect of such ownership has or has not been satisfied.

The remaining question is, whether the defendants were authorized by any act of Parliament to construct their railway upon the bed of the navigable part of the river. The act on which the defendants relied is 8 & 9 Vict. c. 20, s. 16 [this section was read, see ante, 168]. The company have here constructed an embankment and road in and upon the river, described in the plan and mentioned in the books of reference. The word "rivers" is here used without any qualification, and would seem therefore to include navigable rivers, as well as rivers not navigable, especially as the word "roads," here also used, plainly includes highways, along which the public have fully as extensive a right of passage as they have along navigable rivers. Other provisions are introduced into the act, as to the mode of using roads, but none as to the mode of using navigable rivers. Whether such provisions were intentionally omitted, and, if so, for what reason we cannot tell; but we cannot see that such omission justifies us in qualifying the meaning of the word "river" in this clause, or in effect adding the words "not navigable," which are not to be found in the clause itself. The plans and books of reference would be before the legislature, when the special act for constructing their railway was passed; and although it may be true, as was suggested, that no particular individual felt so much interest in opposing the act, by reason of the insertion of a portion of this navigable river in such plans and books, as to make it a subject of controversy during the progress of the act, yet we are not warranted in supposing that the legislature overlooked such insertion, or in limiting the operation of the plain words which the legislature has employed. The subsequent part of the clause in question was relied on by the plaintiffs, which provides that the company may "alter the course of any rivers not navigable within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper;" and it was urged that the legislature manifestly intended to confine the power of diverting and altering the course of rivers to those which are not navigable, which would be entirely frustrated if the word "rivers," in the prior part of the clause, were held to include navigable rivers, since the language used in that prior part is so comprehensive as to include the power of diverting and altering the course of the rivers there mentioned. But we think that this reasoning is not sound. The prior part of the clause gives only the power of constructing works in and upon rivers, within the lands described in the plans and books of reference; yet we think not so as to divert or alter the entire course of such rivers, or to obstruct the whole navigation of them if navigable; for we cannot suppose that the legislature would permit such lands to be included in the plans and books of reference, as would enable the company so to divert or alter the entire course of navigable rivers, or to obstruct the entire navigation of them. But the latter part of the clause, which does apply to such entire diversion and alteration of the course of rivers, is expressly confined to those which are not navigable. The one contemplates the appropriation of a part of the river to the uses of the railway, leaving the residue of it in its usual course, and the navigation of that residue unimpeded where it is a navigable river. The other contemplates the entire destruction of the old course. The erecting anything in a navigable river, or upon a highway, which would be a nuisance if not authorized by act of Parliament,

Cases.

*Construction of
Railway and
Works.*

*Abraham v. Great
Northern R. Co.*

*Cases.**Construction of
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Works.*

cannot, by any reasonable construction of language, be considered as a diverting or altering the course of such river or highway. No doubt such an erection in a navigable river, by preventing the water from flowing at all, along the site of the erection, would prevent the water of the river from flowing in its accustomed channel and course, in so ample a manner as it otherwise would have done, which is the language used in this declaration; but that is a very different thing from diverting or altering the course of the river, within the meaning of the statute 8 & 9 Vict. c. 20. For these reasons we are of opinion that the plea is sufficient.—Rule discharged.

Where the power of fully completing a railway depends, by the words of the act, on the voluntary consent of land-owners, such consent must be obtained.

Gray v. Liverpool and Bury R. Co.

Gray v. Liverpool and Bury R. Co. (s).—Motion for injunction. Plaintiffs were owners of lands and cotton-mills erected thereon, in the line of a proposed railway; and, according to the original plan, the railway would pass directly through several of plaintiffs' buildings, and the gort and feeder by which their mills were supplied with water. Plaintiffs opposed the application for the act of Parliament, in the Commons, and it was ultimately agreed that the following clause should be introduced into the bill for the plaintiffs' protection, and the opposition was withdrawn.—“And whereas J. G. and W. G. are the owners and occupiers of certain mills, lands and buildings, situate at D., through which the line of the railway, as delineated on the plans and sections, passes, it shall not be lawful for the company, without the consent of the said J. G. and W. G., or the owners for the time being, to construct the railway nearer to the same mills, lands and buildings, or any of them, than the south-east end of L. Bridge, delineated on the said plans, and therein numbered 1.”

By another section it was enacted, “That the company shall not, in or during the construction or progress of the railway or works, divert, obstruct or in any way injure the gorts of the said J. G. and W. G., connected with their works at D., and in the plan and book of reference of the company referred to, under the penalty of 50*l.* for each day of the occurrence of such diversion, &c.,” to be paid them above the damage actually sustained, nor shall the company, during the construction of the railway or works, “obstruct the carrying on of the said works of the said J. G. and W. G. under the like penalty,” &c.

The defendants conceived, that according to the intention of the first-mentioned section, they were authorized to construct the railway, without the consent of the plaintiffs, upon any line not nearer, on the south side, to the line originally laid down, than a line parallel thereto, drawn through the southernmost part of the east end of L. Bridge; and they accordingly gave the ordinary notices, and were proceeding, without plaintiffs' consent, to construct their railway in a line parallel to the original line, at the distance named, but passing through some of the lands belonging to plaintiffs, which, however, were separated from the lands on which their works were situated by a public road.

Plaintiffs thereupon applied for an injunction to restrain defendants from constructing the railway “nearer to the mills, lands and buildings than the south-east end of L. Bridge,” and from entering, &c. upon plaintiffs' said lands and property, nearer than the south-east end of L. Bridge.

Lord *Langdale*, M. R., on granting the injunction said, There is a collective description in the words “mills, lands and buildings;” they include the whole and every part of those premises of which J. G. and W. G. were the owners and occupiers. They were the owners and occupiers of the whole which is delineated on the map, and the railway is not to be constructed nearer than the south-east end of the bridge, which bridge crosses the river Tonge, and is immediately continued by the

(s) 10 Jur. 364; 9 Beav. 391.

road, which has on both sides a portion of those lands. The words in themselves do not seem to me to be attended with any difficulty. They mean "you shall not come nearer to my estate than the bridge." It has been argued that that cannot be the construction; and the only question is, whether there is anything to overcome that which is the plain and natural construction of these words. In the first place it is said, that this construction would make the construction of the railway dependent altogether on the will of Messrs. G. That does not in itself seem very absurd, though it is said to be so, because, it is argued, the whole scope of the act clearly manifests that, at all events, there was to be a railway constructed. How is that? A railway is to be constructed to be sure, but subject to the provisions in the act, and this is one; the railway is not, therefore, to be constructed at all events, but only subject to the provisions of the act, including among others this clause, and not otherwise. Then it is said you must give a restricted meaning to the words "mills, lands and buildings," and that they must mean either those mills, lands and buildings which are employed in the factory, and which give the particular special value to the property, or those strictly cut by the line of railway, as originally designed, or they must have some other restricted meaning. I must say I do not find anything to convince me that this was the intention of both parties. As to the arguments used about the legislature intending this or that, I think nothing of them. The legislature had no object, but to provide that there should be an agreement between the parties, and that the railway should be constructed, provided this agreement should be made.

Upon appeal Lord *Lyndhurst*, C., directed the question, as to the legal rights of the parties in this case, to be tried at law.

Lancaster and Carlisle R. Co. v. Maryport and Carlisle R. Co. (t).—Defendants obtained an act for making certain branch railways, and it was provided that nothing therein contained should extend to prejudice, diminish, alter or take away any of the rights, privileges, powers or authorities vested in plaintiffs under their act, but all rights, privileges and franchises of the company, and all the powers, authorities and provisions in the said last-mentioned act contained, were saved and reserved to them as if defendants' act had not been passed; so always nevertheless that such rights, &c., be not exercised in such a manner as to prevent defendants from compulsorily taking land of sufficient breadth to admit of the formation of the extensions thereinbefore authorized, such extensions, however, not to exceed respectively twenty-two feet in breadth, with sufficient breadth for the necessary slopes.

Plaintiffs were empowered by their act to take certain lands compulsorily, and also to take certain other lands with consent. Defendants had power to take compulsorily certain lands scheduled in their act, amongst which were certain pieces of land which plaintiffs had purchased, with consent of the owners, subsequently to the date of defendants' act.

Defendants gave notice of their intention to take compulsorily a greater quantity of the land purchased by plaintiffs than was required for the line of their railway for stations, &c., whereupon plaintiffs applied for an injunction to restrain defendants from taking more of their land than was necessary for their line of railway.

Shadwell, V. C., granted the injunction, on the ground that plaintiffs, having occupied the ground before defendants, were entitled to hold so much of it as was not actually wanted for the formation of defendants' railway: and said, "The rule applied to the construction of wills is, that the last part controls the first, and so I

Cases.

*Construction of
Railway and
Works.*

*Gray v. Liverpool
and Bury R. Co.*

Construction of a
statute which
gave inconsistent
powers to two
railway com-
panies.

*Lancaster and
Carlisle R. Co. v.
Maryport and
Carlisle R. Co.*

*Cases.**Construction of
Bridges.*

*Lancaster and
Carlisle R. Co. v.
Maryport and
Carlisle R. Co.*

must treat it with respect to this act of Parliament. In the first instance, the first section gave very general powers, for it declared that, for the purposes of the company, they should have all the powers given by their former act, 'save and except such of them as are by this act repealed, altered, or otherwise provided for'; so that in the very first section in which they give the general power, they put a very general restriction by the words that I have last used. The next section applies to the extension, and nothing turns on the construction of that section, because the consent was actually given with respect to the plaintiffs taking the lands."

The sixth section says, "that the company, in making the said extensions and branch railways, shall not have power to deviate to the westward from the line delineated on the plan, or to go through any land which either of these companies have contracted to purchase, or have power under their respective acts of Parliament to purchase." Now there is nothing said about a compulsory power, the words are only "power to purchase;" and if the defendants, exercising as they thought fit sufficient astuteness, have not taken care to contract to purchase, or to purchase this land, but have left them open to be contracted for, or to be purchased by the plaintiffs, they have, if I may use an expression peculiar to a certain game, left a blot which the other side took care, when they had the throw, to pick up, and the consequence was that these words of exception have given, unexpectedly I dare say to the defendants, an advantage to the plaintiffs which the defendants did not foresee.

VI. *Cases relating to the Construction of Bridges.*

Construction of a special act as to the right to erect a temporary bridge across a canal.

London and Birmingham R. Co. v. Grand Junction Canal Co.

London and Birmingham R. Co. v. Grand Junction Canal Co. (u).]—A company were empowered by an act to do all works necessary and convenient for constructing a railway, and, among others, to cross canals and make embankments in the line; and, in particular, to cross a canal of which defendants were proprietors, and to make an embankment over a valley near the same place. Subsequent clauses in the act restricted the company from doing anything which should obstruct the navigation of the canal; and specified the height and dimensions of any bridge to be made and maintained for carrying the railway over the canal. The company, for the purpose of transporting earth from the higher lands on the south to the lower lands on the north side of the canal, for constructing an embankment, erected a temporary bridge over the canal, supported partly on piles driven into the bed of the canal. Defendants pulled down such bridge, and thereby destroyed the passage of communication for the carriage of the earth. It was decided by Sir C. C. Pepys, M. R., on a motion for an injunction to restrain defendants from destroying such bridge, that the clause empowering the railway company to cross canals in the progress of their works was not restricted by the subsequent clauses, which applied to permanent bridges; and his Honor restrained defendants from obstructing the making or use of such passage of communication.

Semble.—Although a railway company are not to act capriciously in regard to carrying out the powers of an act of Parliament, the act constitutes them the judges of the most convenient mode of conducting their works.

If a railway company are authorized to erect a temporary bridge for a particular purpose, they

Priestly v. Manchester and Leeds R. Co. (x).]—The Manchester and Leeds R. Act, sect. 34, reciting that the railway was to be carried across the Aire and Calder Navigation at three specified places, required the company to erect bridges, and prescribed the dimensions of such bridges. Sect. 38 provided that the company

(u) 1 Railw. C. 224. See also *Attorney-General v. Eastern Counties R. Co.*, post.

(x) 2 Railw. C. 134; 4 Y. & C. 72.

should, during the progress of constructing such bridges, leave an open, uninterrupted navigable waterway, of a specified height and extent. Sects 42 and 44 provided that the railway company should not make any bridge over the navigation, and, generally, should not interfere therewith otherwise than as provided for by the act. Sect. 94 empowered the company, subject to the restrictions imposed by the act, to make and maintain the railway, and to construct in, under, upon, across, or over any hills, valleys, roads, rivers, canals, brooks or streams, or other waters, such embankments, bridges, aqueducts and conduits, either temporary or permanent, and to erect and construct such buildings, engines, machinery, apparatus, and other works and conveniences, as the company should think proper.

By an agreement made between the companies, and afterwards embodied in an act, the line of railway was changed, by which the navigation was crossed only once by the railway, and only one bridge required. The railway company had introduced into the agreement a clause enabling them to erect temporary bridges across the navigation, but which was struck out by the navigation company. The railway company, having commenced the building of the permanent bridge, erected a temporary bridge adjoining to the permanent bridge, which was used partly for building that bridge and partly for conveying materials across the river. An injunction was granted *ex parte*, restraining the erection of a temporary bridge across the navigation, or of anything impeding the navigation in a manner not authorized by the act. Upon motion to dissolve the injunction, it was decided that, subject to the restrictions of the act, the 94th section ought to be literally carried into effect; that the railway company had the power of erecting such a temporary bridge, the power being exercised reasonably and *bonâ fide*; that in construing such power with a view to its reasonable and *bonâ fide* exercise, regard must be had to the peculiar purpose for which the permanent bridge was designed; that the temporary bridge, being of the dimensions specified in the 34th section, and a navigable waterway being left, as required by the 38th section, the same was lawfully erected under the 94th section, for the *bonâ fide* purpose of building the permanent bridge; that the temporary bridge, being erected and used for a lawful purpose, might also be used for other purposes, for which alone it could not have been erected; and that, subject to the restrictions of the act, the company, acting *bonâ fide*, were constituted the judges of the mode of executing their works.—Injunction dissolved.

*Cases.**Construction of Bridges.*

may use the bridge for other purposes, provided no additional injury is thereby caused to the navigation.

Priestly v. Manchester and Leeds R. Co.

Manser v. Northern and Eastern Counties R. Co. (y).]—A company proposed to cross a mill-stream by a bridge, to be supported in the centre of the mill-stream by two piles, placed sixteen feet apart. The bridge was to be six feet in height above the level of the water. Plaintiff asserted that the height was insufficient to allow barges to pass under, and that placing piles in the stream would impede the flow of water, and stop the working of the mill. The company alleged that the nature of the ground prevented them from making the bridge of a greater height; and that, over a navigable river, connected with the mill-stream, there were some bridges only six feet high; and that, at the time of the passing of their act, there was over this mill-stream a bridge of that height, though such bridge had since been pulled down by plaintiff, and re-erected of a greater height; and that the flow of the water would be in no way impeded by the piles. Plaintiff alleged, that although some of the bridges over the navigable river were of the height of six feet, yet that the water under them could be lowered by waste-gates; that to obtain a perfect level on the line of the railway, the embankments, and consequently the bridge

To what extent a railway company may interfere with a river navigation by erecting a bridge.

Manser v. Northern and Eastern Counties R. Co.

(y) 2 Railw. C. 380. As to how far the company are liable for the acts of their contractor interfering with navigation, see

Hole v. Sittingbourne and Sheerness R. Co., 30 L. J. (Exch.) 81; *Gray v. Pullen*, in Exch. Ch., Nov. 1864.

*Cases.**Construction of
Bridges.**Manser v.
Northern and
Eastern Counties
R. Co.*

over the mill-stream, ought to be raised two feet. *Shadwell, V. C.*, decided that plaintiff was not entitled to require the company to build the bridge at the height of more than six feet. The plaintiff appealed.

Lord *Cottenham, C.*—I feel, as I have in all these cases, that I myself am much less capable to make an order that would be perfectly just between the parties, than might be obtained by calling in some professional assistance, who would state to me what the result of the affidavits is, on the exercise of that engineering science which I do not possess, even if certified as to the facts. But I have no doubt whatever upon the construction of the act. The company undoubtedly have powers to take land, if they think proper, within the limits prescribed by the act; and I will assume that they have a right to adopt any level which they please; but then they cannot do that capriciously; and, having got into a certain level, they cannot part with that level, and come down on the plaintiff's stream of water, and destroy the interest in that stream of water, without some very cogent reason for so doing. The only way to try that is to take a case, and I will take this case. Here they say they have left sufficient space, and have not so interfered with the water, as to create a damage to the parties interested in the navigation of it; but if that be the construction of the act, they had a right to come down and destroy the navigation, or to bring their bridge so close to the surface of the water as entirely to impede the navigation. That could not be done, except in cases of extreme necessity; and the act has clearly and carefully, and also very intelligibly, laid down the rule that they are to follow. They may do what is necessary for the purpose of carrying through the works which the act authorizes them to carry on, but, in doing that, they must do as little damage as may be. If they cannot carry on the works without doing certain damage, if it is land, they are bound to purchase it; if it is not land, but some interest which is affected by it, they are bound to compensate the party in money; but if the damage to be done is not a necessary consequence of the works they are to carry on, then this court, being apprised of what is in progress, will interpose to prevent it: because, in that case, it is an excess of the power given by the act; the act only authorizing them to carry on their works, doing as little damage as may be. If they think proper to carry on the works, doing more damage than the necessity of the case requires, then the court will interfere. That being the construction which I have always put on these acts, and which, I believe, all other judges have done, the question is, whether this case comes within that rule of construction. I find in this case, certainly, a very peculiar state of facts, because I find the railroad proceeding up to certain points on each side of the locus in quo on a certain level, and then the level is altered, and assumes a lower level, and is gradually lowered, until it reaches the particular point in question, which I understand to be the lowest point of the level on which the railroad runs; and from this particular point it rises to the level which it pursues in other places. I certainly have not been at all satisfied of the existence of the necessity that the company should adopt that course. [His lordship then proposed a reference to an engineer of eminence; and the case was ultimately compromised.]

Construction of
a special act as to
the width of a
road under a
railway bridge.

Attorney-General v. London and Southampton R. Co. (z).—The act (sect. 11) empowered the company to make in, upon, across, under or over the lands, streets, hills, valleys and roads, such inclined planes, tunnels, embankments, bridges, arches and piers, as they should think proper, according to the provisions and subject to the restrictions of the act. Sect. 74 provided, that, where any bridge should be erected by the company for the purpose of carrying the railway over or

(z) 9 Sim. 78; 1 Railw. C. 302. See *R. Sheffield and Lincolnshire R. Co.*, 1 Johns. & *v. Birmingham and Gloucester R. Co.*, 2 Q. B. Hemm. 631, 47, post, 399; see also *Clarke v. Manchester*,

across any turnpike road or other public highway, the span of the arch should be of such width as to leave a clear and open space under every such arch of not less than fifteen feet. Sect. 77 provided, that where, in the exercise of the powers of the act, any part of any carriage or horse-road, either public or private, should be found necessary to be cut through, diverted, raised, sunk, taken, or so much injured as to be impassable, the company should previously thereto cause a sufficient road to be made instead thereof, as convenient for passengers and carriages as the road to be cut through, or as near thereto as might be. The company erected a bridge over a turnpike road, at a place where the width of the then existing road was forty feet; and, owing to such bridge crossing the road obliquely, and to the piers of the bridge being built on the road, the passage under the arch of the bridge left a width of road of twenty-four feet only for a distance of 160 feet. Held, by *Shadwell*, V. C., that the restrictions imposed by sect. 77 applied only to a case where a road might be either temporarily or permanently diverted; that, under sect. 9, the company were empowered to erect any piers or necessary buildings for a bridge, provided they left a width under such bridge of fifteen feet, as provided for by sect. 74.

*Cases.**Construction of Bridges.*

Attorney-General v. London and Southampton R. Co.

R. v. Manchester and Leeds R. Co. (a).—By an act a company were empowered to divert, raise, sink or deepen any roads, to carry the same over, under or by the side of the railway, subject to the provisions and restrictions of the act. By another act they were authorized (sect. 38) to carry the line of railway across a certain turnpike road by means of a bridge of the width of thirty feet at the least, and for that purpose to lower the then present bed of the road, but in so doing were required to leave a certain inclination on each side of the bridge, and headway under it, and to re-lay and re-form the road. The company made a bridge thirty feet wide, over a turnpike road forty-two feet wide, consisting of thirty feet carriage way, and two footways of six feet each. They lowered the carriage way of the road, but left the footways at their original level. On the trial of certain traverses to a return to a mandamus which had issued, requiring the company to re-form the road, and to lower it the whole width of forty-two feet, the jury found, 1st, that the company had not so lowered the road; 2nd, that they had re-formed the road, in compliance with the act; and 3rd, that the road so made by the company was more commodious to the public than if the whole road had been lowered to the full width of forty-two feet. The Queen's Bench decided (*b*), that "road" meant the whole road, including footpaths, and therefore that the company had not re-formed the road as required by the act; and that the finding of the jury as to its being more commodious was not sufficient to dispense with a compliance with the act; but, upon error in the Exchequer Chamber, the judgment on the first point was reversed.

Construction of special act as to width of a road under a railway bridge.

R. v. Manchester and Leeds R. Co.

Tindal, C. J., said,—The main question in the case arose, viz., whether the company were bound to excavate the road to the full width of the former road. The question is, whether the expression in the 38th section, "the bed of the said turnpike road," is confined to that part of the road which, in another part of the same section, is called the carriage road, or whether it comprises not only the carriage road, but the footpath also. And we are of opinion that, looking to the object and purpose for which the bed of the turnpike road is directed to be lowered, the statute intends no more by that expression than the carriage road. But a further question remains; and it was urged, that the carriage road ought at all events to be lowered to the full width of the former carriage road, which is found not to have been done. If the section had contained any express enactment to that effect, it could not be contended that the superior convenience to the public of the road so made would furnish an excuse for a deviation from the express enactment of the

(a) 3 Q. B. 528; 3 Railw. C. 633.

(b) See 1 Railw. C. 523; 2 Railw. C. 711.

*Cases.**Construction of Bridges.*

Section 49 of the Railways Clauses Act, which prescribes the width of the arch of a bridge over roads, must be construed with reference to the width of the carriage road, excluding footpaths.

R. v. Rigby.

statute; but it is admitted, that there is no express provision to this effect; nor does it appear to us that there is any sufficient ground for holding that such a provision is to be implied.

R. v. Rigby (c).]—Indictment against contractors employed by a railway company, for obstructing a turnpike road, by building on it the piers of a railway bridge, and narrowing it thereby. All the counts in the indictment charged the nuisance to be to the carriage road, but nothing was said about the foot road. For forty years before the building of the bridge, the average width of the carriage road, for fifty yards on each side of the spot where the bridge was erected, was twenty-eight feet, and the footpath on one side was eight feet three inches, and on the other, seven feet three inches. The piers of the bridge stood on the footpath on each side; they were each four feet wide, and were built parallel to the line of the carriage road, not directly opposite to each other, as the bridge was a skew bridge. The effect was, that the carriage road remained as it was before, twenty-eight feet wide, but the footpaths were each narrowed; and the carriage road and footpaths together, which formerly were forty-three feet six inches, were only thirty-six feet. These were the dimensions stated in the case; but if the piers occupy eight feet, it would follow that the total width was only thirty-five feet six inches. Whether the difference of six inches could be accounted for by the circumstance of the piers not being directly opposite to each other, did not appear. These facts were stated on a special case, and after taking time to consider, *Patteson, J.*, said: The prosecutors relied much on the 19th section of the special local act (9 & 10 Vict. c. ccxxxiv), which provides, "that in every case in which the railway shall cross the road otherwise than at right angles, the bridges shall be made with skew arches, so as not in any manner to alter the direction of, or interfere with the line of the said roads, or the footpaths to the same." The object of this section is plain, namely, to prevent the railway company from turning or bending the road, so as to carry it at right angles under any bridge over which the railway passes, and again turning or bending it back on the other side of the bridge to its former direction and line; but the section does not touch or affect any question as to the width of the bridge or the narrowing of the road. The railway company have complied with the section, by erecting a skew bridge. The question in this case depends upon the construction of the Railways Clauses Consolidation Act, 1845. Now, by that act it is provided, that there shall be a clear space of thirty-five feet, if the arch be over a turnpike road, provided that where the average available width for the passage of carriages is less than the width thereinbefore prescribed, the width of the bridges need not be greater than such average available width, but so as not to be less in the case of a turnpike road than twenty feet. It is further provided, that if the average available width of the road be afterwards increased, the railway company shall increase the width of their bridge, if required, to an extent not exceeding the width of the road so widened, "or the maximum width herein, or in the special act prescribed, for a bridge in the like case over or under the railway." Much discussion took place on the argument as to the word "maximum," but the meaning of the legislature is very plain. Where the average available width for the passage of carriages on any road exceeds thirty-five feet, it may be narrowed to thirty-five feet under the arch, for the arch is only required to be of that width; where it is less, the arch may be of the same width as the road, so as it be not less than twenty feet; and if the road be afterwards widened, the arch must be proportionably widened up to, but not beyond, thirty-five feet. In the present case, the average available width of the road for the passage of carriages is the same as it was before the erection of the bridge, and

(c) 14 Q. B. 687; 19 L. J. (Q. B.) 153; 14 Jur. 329.

the arch is of the same width, and exceeds twenty feet, and the road has not been widened, so as to call on the railway company to widen the arch. Therefore the provisions of the Railways Clauses Consolidation Act appear to have been complied with. No mention is made in that act of footways, as distinguished from the road for the passage of carriages. If they are to be taken as part of the turnpike road, then the road has been narrowed from forty-three feet six inches to thirty-six feet, and the arch of the bridge is only twenty-eight feet, instead of thirty-five. We think, however, that the footpaths cannot be taken as part of the turnpike road, over which the arch of the bridge was to be thrown, within the meaning of these acts of Parliament. There is no pretence for saying that they can be taken into account in ascertaining the average available width of the road for the passage of carriages; and as that width has been preserved as it was before, in strict conformity with the acts of Parliament, it is not true to assert, as every one of the counts in this indictment does, that persons cannot pass with their carriages as they used to do. The obstruction is to foot passengers only, which is not forbidden by the acts, neither is it charged as the nuisance complained of by this indictment. The cases cited in argument are wholly inapplicable to this indictment. Judgment for the defendants.

Cases.
Construction of
Bridges.
R. v. Rigby.

R. v. London and Birmingham R. Co. (d).]—By the act the company were empowered to make roads over the railway, and, for that purpose, to alter the course of or raise any road. By sect. 63, when any public carriage road shall be carried over the railway, the road shall be of the clear width of fifteen feet within the fences of the bridge; by sect. 67, where any part of any carriage or horse road shall be cut through, raised, sunk or taken, the company shall cause another good and sufficient road to be made instead thereof, as convenient for passengers and carriages as the former. The company diverted a highway, and erected a bridge to carry it over the railway. The original road was forty feet wide, and the substituted one only twenty-seven, less convenient for driving sheep and cattle. The span of the bridge was thirty-three feet, but it was continued with wing walls and parapets to the distance of 168 feet, and the width of the road on the bridge and between the parapets was only sixteen feet.

Construction of a
special act as to
the width of a
bridge erected
over a highway.
R. v. London and
Birmingham
R. Co.

Lord Denman, C. J., held, at nisi prius, that the new road, being narrower, was not as convenient as the old one, nor a good and sufficient road within the meaning of the 67th section, the act intending it to be as convenient for a drift way as for passengers and carriages; also, that fifteen feet is the maximum width required by the act for such bridges, but that the company had no right to contract the road by the wing walls and parapets beyond the span of the bridge.

R. v. Birmingham and Gloucester R. Co. (e).]—A railway company were empowered, subject to the provisions and restrictions of the act, to make upon, across, under or over the railway such roads as they should think proper. By sect. 41, when any part of any road should be cut through, raised, sunk, taken, or so much injured as to be impassable, the company, before any such road should be so cut through, &c., were to cause another road to be made instead, as convenient or as near thereto as might be; and where the road cut through, &c. should be a turnpike, the substituted road, if temporary, was to be made and the principal road restored within six months. By sect. 47, where any bridge should be erected for carrying any turnpike road, public highway or occupation road over the railway, the road over such bridge was not to be less than fifteen feet. A mandamus, reciting that the company had (after the compulsory powers given for taking land had

Construction of a
special act as to
the width of the
approaches to a
bridge erected
across a railway.
A return that a
railway company
cannot obey a
writ of man-
damus is bad.
R. v. Birming-
ham and Glou-
cester R. Co.

(d) 1 Railw. C. 317.

(e) 2 Q. B. 47; 2 Railw. C. 694.

Cases.Construction of
Bridges.

*R. v. Birmingham
and Gloucester
R. Co.*

expired) cut through a turnpike road forty feet wide, and had made a bridge thereon for carrying it over the railway, the bridge and approaches (which were about 150 yards in length on each side of the bridge) being about thirty feet wide only, commanded the company to restore the turnpike road according to the act.

Held by the Court of Queen's Bench, that the company were bound to make the approaches as wide as the turnpike road had been. And held no sufficient return, that the approaches, though of a less width, were as convenient to the public as they could be made in execution of the powers of the act, and as convenient to the public as the original road had been; or that the company could not now widen the approaches without taking and purchasing more land; that their compulsory powers of purchasing under the act had expired before they were called upon to widen; and that they had not then, nor have since had, the power to take or purchase land for such purpose (*f*). In the judgment the following remarks were made on *Attorney-General v. London and Southampton R. Co.* (ante, p. 396). "In that case, it is true that his Honor does intimate incidentally such an opinion as has been attributed to him; the question before him then being, whether he should declare by his order a certain archwork of the said company to be a nuisance, and prohibit them from further prosecuting their works, because they were about to abridge the width of a public highway. The point, however, which now comes before us seems to have been very slightly touched in the argument, and was wholly unnecessary for the decision of the Vice-Chancellor, which was, that, provided the said arch be 'not less' than the width prescribed by the act of Parliament, he did not feel himself justified in making the order desired. The Vice-Chancellor also gives as a further reason, that many other methods were open to raise the question (alluding specially to an indictment for a nuisance) without his interference. We cannot, therefore, consider this to have been the deliberate judgment of the Vice-Chancellor upon this subject."

Construction of a
special act as to
the ascent to a
bridge.

*Attorney-General
v. London and
Southampton
R. Co.*

Attorney-General v. London and Southampton R. Co. (*g*).]—The act directed, that where any bridge shall be erected for the purpose of carrying any turnpike road over or across the railway, the ascent to such bridge shall not be more than one foot in thirty feet, except where the "present inclination" of such turnpike road shall be steeper, in which case the inclination of such road shall not be steeper than the present inclination of such road.

Shadwell, V.-C., decided, that the expression "present inclination" is to be referred to the inclination of a road at the time when taken by the company; that the exception applies as well to a bridge built on a new or diverted road made by the company, as to a bridge built on the site of a previously existing turnpike road; that the relative steepness of a new or diverted road and of an old road, is to be determined, not by their comparative acclivity, measuring the whole length of each from the commencement to the end of the deviation, but by a comparison of the rate of ascent on the new road, from the place of diversion below the bridge to the crown of the arch of such bridge, with the rate of ascent on the old road from the same place to the point on the old road at which, if the two roads had been parallel, the same distance would be attained.

When a street
may be lowered
to obtain the
necessary height
under a bridge,
notwithstanding
the provisions of
a local paving
act.

R. v. Eastern Counties R. Co. (*h*).]—A company were empowered to raise or lower any roads, in order the more conveniently to carry the same over or under or by the side of the railway. By sect. 100, where any bridge should be erected by the company over any public carriage road, not being a turnpike road, the centre

(*f*) See *R. v. North Western R. Co.* on this point.

(*g*) 1 Railw. C. 283.

(*h*) 2 Q. B. 569; 3 Railw. C. 22.

of the arch must be of a height from the surface of the road of not less than sixteen feet. By sect. 120, nothing is to derogate from any of the rights or privileges of any parish over which the railway shall pass, acting under any local act. A local paving act enacted, "That no person shall alter the form of any pavements which shall be now made by virtue of this act without the consent of the commissioners, or in anywise encroach thereon, or put up any posts," &c. A mandamus having issued, a return was made, and the question was, whether the railway company were authorized to lower the pavement of a street for the purpose of giving sufficient headway to a bridge.

Coleridge, J.—The commissioners do not dispute the right to carry the railway on the arch, but they deny the right to alter the pavement. If the question stood on the two clauses alone, there could be no doubt. The 9th in express terms contemplates the lowering of the roads; and the 100th, when it limits the steepness of descent under an arch, clearly looks to an alteration of level to be produced by the railway works. But it is said that the powers of the 9th section are expressly given, subject to the provisions and restrictions of the act, and that one of the provisions included is to be found in the 120th section, which provides that "nothing in the act shall extend to prejudice any of the rights or privileges of any parish over which the railway shall pass, acting under any local act." The parish is said to be within these words, because the paving, &c., are by a local act placed under the control of commissioners, in whom the pavements are vested. The same statute enacts, "that no person shall alter the form of any pavement which shall be made by virtue of this act, without consent, or in anywise encroach thereon." If this had been the whole section, it would have been very questionable whether it could have been construed so as to restrain the company from exercising powers plainly given under an act so long posterior in point of time, and which in many instances are so essential to the carrying out the purposes of their act. It would also be very questionable whether a local act, such as the one in question, comes within the meaning of the 120th section of the railway act. But the point is clear when the whole section is looked at. After the words already cited, these immediately follow: "or put up any step, or erect any bulks, or place out any show-glasses, or make any dungholes or sawpit, or other matters, so as to be an encroachment, upon pain of forfeiting 5*l.*" It is clear that this section was inserted merely as a police regulation, to prevent what are commonly called street nuisances and encroachments; and the words "form of the pavement" are well suited for such a purpose. To lower the street and relay the pavement in the same form and of the same dimensions, but on a different level, is scarcely to alter the form of the pavement. Their counsel also relied on a section in the same act, which vests the property of the pavements in the commissioners; but this appears to us immaterial. Judgment for defendants.

R. v. Sharpe (i).]—A company were empowered "to divert or alter any roads, in order the more conveniently to carry the same over or under the railway." The company, in carrying a road under the railway, had erected a skew bridge, which diverted the road to an angle of 45°, instead of 34°, which was the angle made at that particular point by the old line of road. At the trial of an indictment against the company's engineer, *Alderson, B.* (having consulted *Parke, B. (j)*), directed the

Construction of a special act as to the right to erect a bridge at a different angle from the former road.

(i) 3 Railw. C. 33.

(j) *Parke, B.*, said that, in a case which had been tried before him as to the power which a company had to make a railway over a public highway, he laid it down that "if possible, the work must be constructed

without any inconvenience to the public; but if it could not be done without some such inconvenience, it must be done with the least possible, according to the provisions mentioned in the act." This was *R. v. London and Southampton R. Co.*, tried at

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jury, that, as the only way for the company to resist the charge was, to show that the bridge complained of had been built in conformity with the act of Parliament, the question in substance was, what was the most proper way to construe it. The word "conveniently" meant more conveniently upon the whole for carrying into effect the purposes of the act; and, if the work was done in a mode in which an experienced engineer would construct it, having reasonable regard to the interests both of the company and the public in the construction of it, it was to be looked upon as being in conformity with the intention of the act; that it was, therefore, for the jury to say, whether there was any practical inconvenience arising to the public, by the road being diverted more obliquely than before. If the public would sustain such inconvenience, then, as it was clear that the bridge could be so made, and no inconvenience was added to the public by its not being so made, the verdict should be for the Crown; but, if they thought that no material practical inconvenience was sustained by the public, in having the present bridge instead of the other of 34°, as it would be across the original road, and that an experienced engineer would have so constructed it, having regard to the interests both of the public and the company, they had a right to make such a diversion in building the bridge. The jury found a verdict for defendant; and the Queen's Bench refused a new trial.

Where a special act required a company to strengthen an old bridge described in the act:—Held, that they might nevertheless pull down the old bridge under their statutory powers, and build a new one.

Where an umpire directed a road to be carried in a particular direction, and the company afterwards made the road, but deviated from the line laid down:—Held, that it was only a subject for compensation, if the road was less convenient.

Wood v. North Stafford R. Co.

Wood v. North Stafford R. Co. (k).—Motion to discharge an injunction. Plaintiffs were owners in fee of large cotton mills and a brewery, and premises, in Macclesfield, immediately adjoining S. Bridge, and close to the turnpike road from Langley across S. Bridge to M. When defendants' bill was before Parliament, plaintiff opposed it in committee, and an agreement was afterwards entered into and the opposition withdrawn. By the agreement, the compensation to be paid to plaintiffs, and other matters, were to be settled by arbitration. Amongst other things, the arbitrators were to be at liberty to take into consideration loss of trade and interruption to business, and to award a sum for new buildings; and to be invested with all powers contained in the Lands Clauses Act, as if the sale had taken place under the compulsory powers of the company's acts. And by the sixth clause, "The arbitrators, in fixing such price, shall at the same time decide upon suitable approaches to be made by the company, to the whole of the premises of the plaintiffs, including the brewery, by a good road on arches from or near S. Bridge to the yard, for the purpose of business."

The award was subsequently made and damages given, and the umpire also directed that the company should make a good road on arches, from or near S. Bridge, to plaintiffs' factory yard, in the line shown on the plan annexed, such road to be seven yards wide, to be made according to the sections shown on the plan. The lines thus indicated carried the approach to plaintiffs' premises into the road leading over S. Bridge into M.

When the award was made, the company did not contemplate altering the site of S. Bridge; but afterwards it appeared more expedient to pull down the bridge, and erect another bridge; and it then became necessary to divert the turnpike road which led to S. Bridge, and, consequently, to depart from the line marked out for the approach to plaintiffs' premises, by the umpire, and thus to add fourteen yards to the distance, between plaintiffs' premises and M.

The injunction had been obtained on the allegation that the substituted road would be very inconvenient to plaintiffs, and would materially injure their premises.

the Hants Summer Assizes, 1838, in which his lordship held, that mere expense was no reason for not making a road over the cut-

ting as convenient as before.
 (k) 1 Macn. & G. 278.

Lord Cottenham, C., said—No doubt, when this award was made, the deviation in question was not contemplated by either party. By the 14th section of the Railways Clauses Consolidation Act, and independently of the agreement, this company has (as all other railway companies have) the power of deviating within certain limits; and, so far as those limits are concerned, it is admitted that the deviation complained of is within the boundary which the act of Parliament has authorized. It is said, however, that by the 30th section of the special act (l), the existence of S. Bridge is contemplated. Now the 16th section of the general act, authorizing the construction of bridges and other works, is incorporated into the special act; and the 30th section of the latter must, therefore, be construed in connection with the provisions of the general act; and I am of opinion, that, so far from interfering, the 16th section is quite consistent with it. The only object contemplated by the 30th section was the security of the old bridge, which, if the railroad was to pass, as it was laid down in the plans, would require additional props, to sustain the greater quantity of earth to be placed upon it. Then with reference to the contract, the plaintiffs contend that it was agreed, that certain communications to their works should be preserved to them, or substituted for those they had previously enjoyed. (His lordship, after observing that it was no doubt intended that a communication should be preserved, the only point being, whether a deviation having become expedient, and the communication to the plaintiffs' premises being still preserved, though not in the precise line indicated by the award, the company had complied with the award, proceeded as follows:)—There is no allegation that the company has not made the road near to S. Bridge in accordance with the letter of the contract, but only that the plaintiffs have not the same use of the high road into M., as contemplated by the award. I am, however, of opinion that there is a performance, not only in spirit, but according to the letter of the award; and if the substituted road is not so convenient a mode of communicating with the plaintiffs' premises into the town, as the one awarded, that is an injury not provided for by the contract, but is a case which expressly comes under the 16th section of the Railways Clauses Consolidation Act, whereby all damage to roads, &c., is the subject of compensation. The injunction must, therefore, be dissolved.

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Bridges.
Wood v. North
Stafford R. Co.

Northam Bridge and Roads Co. v. London and Southampton R. Co. (m).]—A railway act (ss. 70 and 71) provided for the crossing by the railway of roads, not being turnpike roads. Sect. 72 provided that a turnpike road, which would be crossed by the railway, should be raised or sunk so as to pass over or under the railway. The railway being proposed to cross a road in the mode provided for by sects. 70 and 71, plaintiffs filed their bill, insisting that the road was a turnpike road, and praying to restrain the railway company from crossing over until they complied with sect. 72. *Shadwell, V. C.*, being of opinion that the road was not a turnpike road, refused the motion, but directed a case for the opinion of the Court of Exchequer, and a certificate was returned by the Judges, stating, that the road was a turnpike road. Upon a subsequent motion for the injunction, it was decided,

When the construction of a special act will be submitted to a court of law.

Northam Bridge and Roads Co. v. London and Southampton R. Co.

(l) By sect. 30, "the company shall, and they are hereby required to make and execute, at their own expense, to the reasonable satisfaction of the bridge-master of the county of Chester, all necessary works for the purpose of strengthening the bridge (referring to Sutton Bridge) so as to enable the said bridge to sustain the additional weight which will be occasioned by the com-

pany raising the road leading thereto; and the company shall, and they are hereby required, at their own expense, to make good any damage which may be from time to time occasioned to the bridge, or to the county road on each side thereof, by the formation of the railway, or any works connected therewith.

(m) 6 M. & W. 428; 1 Railw. C. 653.

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that, as plaintiffs' object must be to procure for the public using the road, a compliance with sect. 72, upon the company entering into an undertaking to complete a bridge over the road with all possible despatch, an injunction ought not to be granted (*m*).

VII.—*Cases relating to the Diversion, &c. of Roads.*

If a railway company stop up an old road without substituting a new one, in pursuance of the provisions of a special act, they are liable to be indicted for a nuisance.

R. v. Scott.

R. v. Scott (*n*).]—By an act, a company were empowered (sect. 94) to divert or alter any roads in order to carry the same over or under or by the side of the railway. By sect. 97, in all cases wherein any part of any carriage road, &c. should be cut through, raised, sunk, taken, or so much injured as to be impassable or inconvenient for passengers or carriages, &c., the company should, at their own expense, before any such road, &c. should be cut through, cause a good and sufficient carriage road, &c. to be set out and made instead thereof, as convenient for passengers and carriages as the former road, or as near thereto as might be. The company had diverted a highway, and obstructed the old road by building a wall across it, and had made a new road, which was neither as convenient to the public as the old one, nor as near thereto as might be. Held, that the company were liable to be indicted in the common form for so obstructing the highway.

The company stopped up the public highway mentioned in the indictment, called G. lane, and made a branch, restoring the communication between the termini formerly connected by that lane, but by a different line. The new road was in some respects more convenient to the public than the old, but in others less so. The levels of the adjacent land made it impracticable to give a more convenient line consistently with the regulations of the act, unless at an expense which would be unreasonably great, and quite disproportioned to the benefit which would accrue from it to the public. *Maule*, J., directed the jury to find a verdict of not guilty, if they thought that the company had done no more damage than was necessary, and had made the road as convenient as the former one, or as nearly so as might be; intimating, as his own opinion, that the road made by the company could not be deemed absolutely as convenient, even after allowing for the advantages which the public might have gained from it. But he stated, that the company were not bound to lay out enormous sums of money to procure a slight accommodation to some persons; and that the proper rule seemed to be, that if they could not make the road as convenient as before, without a very disproportionate and unwarrantable expenditure, they should make it as nearly so as they could; and he left it to them to say whether the new road was as convenient as before, or if not, as nearly so as it might be. The jury found a verdict of guilty on two counts (including that first mentioned), and not guilty on the others. On a rule for a new trial,

Lord *Denman*, C. J., said, the defendants proved that the obstruction was caused by the exercise of certain powers conferred by their act of incorporation. The prosecutors, who are the surveyors of the highways, crave our judgment. The work complained of as a nuisance, and undoubtedly making one, is the cutting through of the carriage road. Now, there is no question as to their right to do this: and though they are required, when they do it, to cause another road to be set out and made instead of it, they argue that they are no longer indictable for a nuisance in doing the lawful act, however they may for disobedience of the law, in neglecting to substitute another. The prosecutors reply by referring to the section (97), which requires the company to cause a new road to be made before they cut

(*m*) And see *Wandsworth Board of Works* (Ch.) 854.
v. London and South Western R. Co., 31 L. J.

(*n*) 3 Q. B. 543; 3 Railw. C. 187.

through the old. But the company rejoin, that, from the state of the earth there, it was impossible to do this, and could not be intended by the legislature. This argument we think inadmissible, for reasons too obvious to require a full statement of them. The company have done what the act legalises only on a condition which they have not performed. They stand convicted of the nuisance, and show no justification. The verdict will, therefore, not be disturbed; but we still hope that the parties may consent to an arrangement useful to the public (o).

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Diversion of
Roads.

R. v. Scott.

Attorney-General v. London and South-Western R. Co. (p).—Motion for injunction. Defendants were constructing their railway, which crossed the turnpike road, in a slight cutting of about one foot six inches; and had begun to carry the road over the railway by means of a deviation and bridge; and at the place where the proposed railway was to cross the road, and for a very considerable distance on each side thereof, the road led across a flat and in a straight line; and there was no necessity, for the purpose of passing over the railway, that the road should be diverted from the straight line, and any such diversion would occasion considerable inconvenience to the public; but the company intended to divert the road from the straight line, carrying it from the then present line of road on the north side of the railway, by a sharp curve up to the bridge, and, having crossed the bridge, to return into the then present line of road again, by another sharp curve. The engineers and surveyors, on behalf of the information, deposed, that, at a comparatively trifling extra cost, the company could have carried the road over the railway, by a bridge in its present line, by raising the road as it approached the bridge, for some distance on either side; and that this was the only plan whereby the road could be made as nearly convenient as the circumstances allowed, within the meaning of the Railways Clauses Act (sect 56).

Injunction issued against a company for not making a road equally convenient as a former road under sect. 56.

Attorney-General v. London and South Western R. Co.

In a negotiation between the trustees of the road and the company, the former proposed, that, to lessen the curve, the company should add a pier at each side of the bridge (which was then already erected) nearest the road, and purchase some of the land, which was common land, adjoining the road at each end of the bridge, still further to lessen the curve at the junction with the old road. The company refused to comply with this suggestion, but offered to refer the question to the Board of Trade. This offer was declined, and the information was filed at the relation of the trustees.

Sir Knight Bruce, V. C.—The question is, whether in their proposed works the company are doing as little damage as may be, or whether it can be said that the road intended to be substituted for the road taken away is, in the language of the 56th section, “equally convenient as” the former road, or as near thereto as circumstances will allow.

The impression made by the evidence upon my mind is, that the company are not doing as little damage as may be; and that the road which they propose to substitute is not as “convenient as” the former road, or as near thereto as circumstances allow. They are intending that which, in my view of the facts and of the law, is a wrong; and it is a wrong of a nature, which I understand it to be the office of this court to restrain.

(o) This decision does not seem to apply to cases falling within the provisions of the Consolidation Act. Patteson, J., says, in delivering a judgment under the latter act, “The distinction between this case and *R. v. Scott* is very obvious. That case was decided before the passing of 8 & 9 Vict. c. 20, and rests entirely upon the provisions of

the special act, which contained no remedy for the act complained of, and therefore the common law remedy remained; but here the question is one of construction upon quite a different act.” *Watkins v. Great Northern R. Co.*, 20 L. J. (Q. B.) 391; 16 Q. B. 961; and see ante, 207.

(p) 3 De G. & S. 439.

*Cases.**Diversion of Roads.*

*Attorney-General
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R. Co.*

It has been said, and perhaps justly, that all the court can correctly decide, upon this motion, is, that what the company are doing is what the court thinks not right, whilst the court cannot point out to the company what they ought to do. I do not see how that is to be avoided, except by stating the reasons which induce the court to come to its conclusion, or the manner in which it appears to the court, that that which seems an evil can be remedied.

Now, the grounds upon which I proceed are, that the avowed plan of the company makes a curve, or rather curves, upon the substituted road, inconveniently and unnecessarily sudden; that this suddenness might be removed, and the curve or curves made easier, without any unreasonable or heavy expense, and without any extraordinary difficulty.

There appears to me two ways of avoiding the inconvenience,—either to increase the width of the surface at the ends of the approaches of the bridges, in the manner suggested, with other works of a slight description accompanying it, which, according to my present opinion, subject to anything that the relator's counsel may say, I consider the company not bound to provide; or if the company do not think fit to adopt that course, they may, I apprehend, by lengthening the new portions of the road, and by acquiring more land for the purpose from the common, make the curve sufficiently easy, and sufficiently convenient for the public, without altering or adding to the bridge. Because I think that that which is required for the public convenience may be effected in one of these ways, I am of opinion that the present injunction ought to be granted, without prejudice to any application which either party may make to the Railway Commissioners.

1. What is a sufficient substituted road.
2. A memorandum on the plans and sections that a road is to be stopped and another road used in lieu thereof, does not amount to a licence to the company to stop the road.
3. Where an injunction was disobeyed and a sequestration ordered.

*Attorney-General
v. Great Northern
R. Co.*

Attorney-General v. Great Northern R. Co. (q).—Information for obstructing a public highway. The bill stated that the company were interfering with a public road, by digging a trench and lowering the level of it, and causing a permanent and complete obstruction thereof; and prayed for an injunction restraining them from obstructing the road, or rendering the same less convenient for the passage of carriages, &c., than it had previously been, until they had made a proper substituted road.

Upon the plans and sections deposited with the clerk of the peace, in pursuance of Standing Orders, and referred to by the special act, Crab Lane (the road which was stopped) was coloured blue; another lane, called Rose Lane, was coloured green; and the following note was inserted upon the plan: "Note—Road to be stopped, coloured blue; road to be used in lieu thereof, coloured green." Conflicting affidavits were made as to whether Rose Lane was an adequate substitute for the obstructed road, and also as to other facts.

Knight Bruce, V. C.—Upon the dispute in this case, so far as any legal point is involved, either party is entitled to take the judgment of a court of law; the only question before me is, what ought to be done in the meantime.

Now, on the words on the plans and sections, I am of opinion that nothing material for any present purpose arises.—They seem to me not to confer a right which, without them, would not have existed; and I think also, that they do not give that kind or degree of notice which would be sufficient, on the ground of laches or acquiescence, to impede the action of the court between the contending parties.

Then comes the question of the right permanently to stop this road without any substitution. So far as I can with propriety, in the present stage of the cause, give an opinion upon the law, I think that a right to stop this road permanently, with or without a substitution, has not been shown to exist.

The question then arises, whether the existing road, called Rose Lane, can be treated as a substituted road for the present purpose, during the temporary stoppage of Crab Lane; and I think that it would be a most perverted construction of the act to say that the existing road ought to be so treated. The plaintiff is, therefore, entitled to an injunction to secure to him the passage, either along this road or along a substituted road, not being Rose Lane, while these works are going on, or until the opinion of a court of law can be obtained. The order may be agreed on between the parties. It cannot be necessary to put the company to any useless inconvenience, nor can an injunction be proper which should command an impossibility.

After this injunction had been granted, the company removed the embankment, and proceeded to form their line of railway across Crab Lane on a level. They erected two posts on each side of their railway, and fences extending from the posts towards the sides of the road. The defendants hung gates on the posts. They also opened their line of railway for public traffic, and the gates were kept shut when trains were expected to pass on the railway crossing the highway.

Upon these new facts a motion was made for a sequestration, for a breach of the injunction by erecting the posts, and fences and gates across the highway, and by crossing the lane on a level. And it was insisted that, besides being a breach of the injunction, this proceeding was contrary to 8 & 9 Vict. c. 20, particularly sections 46 and 53. It appeared that the company had not obtained the consent of the justices in petty sessions, authorizing them to cross the highway at a level, under sect. 56, and the Board of Trade had not given a certificate, enabling the company to modify the construction of the road under sect. 66.

Knight Bruce, V. C.—When the injunction was granted the rails were, as I understand the facts, used only for purposes connected with the construction of the railway, and not for the conveyance of passengers or goods; not for what, in the language of the business, is called traffic. But the railway having been opened for public use, it is clear that obstruction and impediment to the free use of the turnpike road are thus caused to a greater extent than was the case at the time of granting the injunction, and, in a sense, differently; and this, independently of the gates. But the gates, however necessary or valuable they may be, for the purpose of protecting life, do, as it appears to me in the sense in which plainly the words “obstructed,” “impeded,” and “hindered,” are used in the injunction, obstruct the turnpike road—do create such an impediment and hindrance as the injunction has plainly forbidden.

I assume that the Railway Commissioners have sanctioned the opening of the railway for public use, and that they did so upon condition that the defendants should erect the gates. But if the commissioners could, by any order or act of theirs, have rendered the defendants’ present use of the turnpike road, or mode of dealing with it, lawful against the right or interests which it is the object of this suit to protect, they have not been proved to me to have done so, or to have professed or intended to do so. My impression is, that the case before me is not in the least degree affected by anything that they appear to have done.

Then comes the question what, if anything, the court ought to do in consequence; for it does not necessarily follow that the process asked must issue. It was upon the defendants, however, to make a case to exempt them from it; and perhaps if they had shown their proceedings not to be plainly and clearly illegal, I mean illegal independently of any question of contempt, or had satisfied the court that the injunction ought not to have been granted at all, or ought to be dissolved, discharged, or put into a shape more favourable to the defendants than it is, or had stated that they had appealed from it, or from the order granting it, or intended to

Cases.

*Diversion of
Roads.*

*Attorney-General
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do so, I might have declined or delayed to direct process to go. But none of these things have they done. On the contrary, my belief is strengthened of the utter impropriety (without any reference to the injunction or this suit) of the acts alleged to be also a contempt of the court; my opinion is more fixed, that the injunction, if it goes far enough, does not go too far against the defendants, and is one of which they cannot justly complain. Considering, then, their conduct to be at once contumacious and otherwise illegal, to be wrongful against the plaintiff individually, wrongful against the Queen's subjects at large, and of—I had almost said—scandalous example, whatever amount of inconvenience may be the consequence of acting against the defendants on this occasion, I think it right to deal with them according to their merits. The consequence may possibly be to stop the railway; I answer again, that it ought to be stopped, for it passes, where it does, by wrong.

The directors of the company and their agents cannot, on this motion, at present be committed to prison. But what can be, shall be done, to repress a daring invasion of private and public rights, maintained in open defiance of law, authority and order. Let a sequestration issue.

Upon appeal to the *Lord Chancellor*, the company undertook to carry the road, called Crab Lane, over the railway, and in the mean time to provide a convenient substituted road, in the manner directed by the Railways Clauses Act; and on payment of costs all further proceedings were stayed.

Any special stipulations as to the mode of constructing works should be embodied in the railway act, or be made the subject of an agreement between the parties.

Aldred v. North Midland R. Co.

Aldred v. North Midland R. Co. (r).]—The trustees of a turnpike road agreed to assent to a bill in Parliament, on condition that the railway should pass over the road at a sufficient elevation, and that the road should not be lowered or otherwise prejudiced. This qualified assent was given in both Houses of Parliament, and the bill passed. Sect. 12 of the act, among other powers, authorized the company to raise and sink roads or ways, in order the more conveniently to carry the same over or under or by the side of the railway. Sect. 72 enacted, that the arch of any bridge, for carrying the railway across any turnpike road, should be of a height, from the surface of such road to the centre of such arch, of not less than sixteen feet, provided that the descent under any such bridge should not exceed one foot in thirty feet. The act contained no particular proviso as to the road in question.

It was decided by *Shadwell, V. C.*, that the modified assent of the road trustees—the terms of which were neither embodied in any agreement between the trustees and the company, nor adopted by the legislature—afforded no equitable ground for restraining the company from enforcing, with regard to the road in question, all the powers conferred by the act; and that the company were authorized to sink the original surface of a turnpike road, in order to give the specified elevation to the arch of a bridge erected for carrying the railway over such road, notwithstanding that the effect, from the peculiar situation of the road, would be to render it liable to be occasionally flooded.

An agreement made before an act is passed to construct a road in a specified manner, is binding on a railway company.

Edwards v. Grand Junction R. Co.

Edwards v. Grand Junction R. Co. (s).]—A company had projected a railway to cross a certain turnpike road. The trustees of the road had taken measures for opposing the bill, unless certain clauses restricting, with regard to such road, the general powers proposed to be granted in the bill, were introduced. The company, by their agent, entered into an agreement with the trustees, to the effect, that, instead of such clauses being inserted in the act, they should be embodied in an agreement between the company and the trustees. One of the terms of such agreement was, that the trustees should not oppose the bill; and they accordingly made no

(r) 1 Railw. C. 404.

(s) 7 Sim, 342; 1 Railw. C. 173.

opposition to it, and the act passed without the restrictive clauses. It was decided by *Shadwell*, V. C., and also by the *L. C.*, that the incorporated company could not exercise a power conferred by the act, in violation of the terms of the agreement. [And see ante, p. 151.]

Cases.
Diversion of Roads.

Breynton v. L. and N. W. R. Co. (t).—An injunction had been obtained to prevent defendants from lowering a turnpike road, so as to make it pass under the railway, instead of crossing it on a level. By the special act, the company were authorized to construct the railway across and on the level of the turnpike road in question; and it appeared that, according to the plans deposited, the company proposed to take part of plaintiff's lands adjoining the turnpike road, and the plan showed that the railway was to pass over plaintiff's lands, on an embankment above the level of the land and road, and that it was intended to raise the road, so as to pass the railroad on a level.

Under these circumstances, the company, by an agreement, purchased plaintiff's lands, and the agreement recited that the company were desirous of making the purchase for the purpose of constructing the railroad "according to a certain plan and section thereof deposited." On motion to dissolve this injunction,

Lord *Langdale*, M. R., said—Two distinct questions arise. The first as to the power conferred by the acts of Parliament, and the second as to the obligations which the company have entered into with the plaintiff.

It is the duty of the court to take care, on the one hand, that public companies, when interfering with the private property of individuals, do not exceed the power conferred on them by the legislature; and on the other, to see that the companies be not impeded in the due exercise of those powers which the legislature clearly intended to confer upon them.

I was very much struck with the peculiarity of this application. It was the first time that a complaint had been made that a company, possessing the power of crossing the roads of the country at a level, were desirous of not exercising it, preferring, under their powers, to make roads pass under or over the railway. No one can have attended to this subject without knowing that the public have a very great interest in preventing the common roads being crossed by a railway on a level.

The facts of this case are, that by the Railways Clauses Consolidation Act, two of the powers which had formerly been inserted in the particular acts—namely, the powers of making lateral and vertical deviations—are given to the company (sections 14, 15). Powers are also given of making works of a particular kind, and especially those referred to in the 16th section, by which, subject to the provisions contained in the general act, and in the special act, power is given to do a great variety of things, including a distinct power to carry a road underneath the railway. Is there anything in this general act to the contrary? I am of opinion there is not. Is there anything to the contrary in the provisions of the special act? It is said that the clause is, which refers to the deposited plans; but, on looking at it, I am of opinion that the enacting part does not abridge that power. It provides that the line shall be observed; and, in this case, it is not proposed to alter it in any respect whatever, either by making a lateral or vertical deviation. Then what is there which constitutes a legislative provision, that this power conferred by the general act is not to have its operation? It is said, that, on the plan which was deposited, the road in question was designated as a road, which was to pass at a level, and that, by a clause in the special act, permission was given for that purpose; but I cannot conceive that the legislature intended by that clause to restrict, in any way,

An agreement recited that a company were desirous of making a purchase of lands to make a railway, "according to a plan and section deposited," and the plan showed that a railway was to cross a turnpike road at a level:—Held, that although the special act authorized the road to be so crossed on a level, the company were entitled to carry the road under the railway; and, *quære*, whether a company can by a private arrangement contract itself out of powers entrusted to them for the public good.

Breynton v. L. & N. W. R. Co.

Cases.Diversion of Roads.

Breynton v. London and North-Western R. Co.

the powers given by the preceding act. The agreement which the parties entered into was to refer to arbitration the question of value, and the amount of loss and damage. It refers in the recital to the special act, and by so doing must include every portion of it; consequently those portions of the general act which are expressly incorporated in it. Looking, however, at that agreement, I am of opinion there is nothing in it which can even tend to diminish the power which the company derived under the acts of Parliament.

Though the point has not been argued, I must say I do not think it perfectly clear, that a company having a power given to it plainly for the public good, but which may effect an injury on an individual in respect of which compensation can be given, has a right to contract itself out of those powers (u). On a proper occasion these matters ought to be most carefully considered. I certainly have never felt the least disposition to extend the powers of railway companies; and I believe it would be for their own and for the public advantage if those powers were less than they seem to be; but if they have powers given them for the public benefit, such, for instance, as to make a road under, instead of across a railway, I do not feel satisfied that they have the right or power to contract themselves out of it, by a private agreement with any individual whatever.—Injunction dissolved.

If surveyors of highways object to a road which has been substituted for a former road, they are not authorized to obstruct it, but must enforce the usual legal remedies (x).

London and Brighton R. Co. v. Blake.

London and Brighton R. Co. v. Blake (y).]—The L. and B. R. Act (s. 59), after reciting that it was intended to carry the railway across certain public roads in the parish of C., and to alter the present surface of such roads, enacts that all alterations, whether temporary or permanent, of any of the said public roads, and all works connected therewith, and all bridges to be erected, and all future repairs of such altered roads, or of any temporary roads, and the quality of the materials to be used and applied, in or to such altered or temporary roads, and all future damage to such altered or temporary roads, shall be made, completed and finished under the superintendence, from time to time, and to the entire satisfaction of the board of surveyors of roads for the parish of C. By sect. 60, "If the company shall, in the doing, making, completing and finishing all, or any, or either of such alterations or works in, to, or belonging to the said public roads, do or cause any injury or damage to any of the said roads, or to any part thereof, and shall not forthwith proceed to repair and make good such injury or damage, to the satisfaction of the board of surveyors of the parish of C., or if the roads so to be altered shall not be properly made and completed and kept in repair, it shall be lawful for the said board of surveyors to cause such repairs to be done." The company made a diverted temporary road leading from one of the said roads, which diverted temporary road was crossed by the railway. The railway did not cross the old road, neither did the company alter the level or surface of the old road. The company also made and tendered to the surveyors a permanent diverted road, which the surveyors refused to approve of or accept. The company having, in the execution of their works, crossed the temporary diverted road with locomotive engines, the surveyors put up fences on either side, so as to obstruct the passage across it:—Held, by *Shadwell, V. C.*, that, even if the surveyors had, under sects. 59 and 60, jurisdiction to determine in what manner the diverted permanent road should be made, they were not justified in putting up the fences across the temporary road, but ought to have applied to equity for an injunction, or to a court of law for a mandamus; and

(u) See *Attorney-General v. Corporation of Plymouth*, 9 Beav. 67.

(x) The Highway Act, 5 & 6 Will. 4, c. 50, s. 82, and following sections, authorizes justices of the peace to divert existing highways under certain conditions. See as to

the construction of these sections, *R. v. Newmarket R. Co.*, 19 L. J. (M. C.) 241; 15 Q. B. 702; *R. v. Justices of Worcestershire*, 3 E. & B. 477; *R. v. Local Board of Midgley*, 33 L. J. (M. C.) 188.

(y) 2 Railw. C. 322.

that the right of the surveyors was a private right, the surveyors being in no way interested in the question of public safety.

Whether, upon the true construction of the act, such diverted temporary road was an alteration of a road within the meaning of sects. 59 and 60—*quære*. This case was compromised.

Cases.
Repairs of
Works.

VIII. Cases relating to the Repairs of Works.

R. v. Inhabitants of Kent (z).]—The Medway Navigation Company, being empowered under a local act (16 & 17 Car. 2) to make the river navigable, and to take tolls, and “to amend or alter such bridges or highways as might hinder the passage or navigation, leaving them or others as convenient in their room,” &c., and having forty years ago destroyed a ford across the river in the common highway, by deepening its bed, and built a bridge over the same place, it was decided that they were bound to keep such bridge in repair.

A company under an act of Parliament destroyed a ford, and substituted a bridge: Held, that they were liable to keep the bridge in repair.

R. v. Kent.

Lord *Ellenborough*, C. J., said, “Here the statute gives power to the company to take or alter the old highway for their own purposes, upon condition of leaving another passage as convenient in its room; and if they do not perform the condition, they are not entitled to do the act. It is a continuing condition; and when the company thought proper, for their own benefit, to alter the highway in the bed of the river, so that the public could no longer have the same benefit of the ford, they were bound to give another passage over the bridge, and to keep it for the public.”—*Le Blanc* and *Bayley*, Js., concurred.

R. v. Kerrison (a).]—Where certain persons and their successors were authorized by Parliament to make a river navigable, and to cut the soil of any persons for making any new channel, &c., by virtue of which they cut through a highway, and rendered it impassable, and a bridge was built over the cut, over which the public passed, and which had been repaired by the proprietors of the navigation, it was decided that the proprietors, and not the county, were liable to repair the bridge. Lord *Ellenborough*, C. J., said—“The undertakers of this navigation have a duty arising out of the execution of their own powers under the act. The act enables them to cut new channels as occasion should require; and, if occasion requires them to cut through a public highway, their duty is to furnish a substitute to the public, by means of a bridge. Can we put any other construction upon the act but this—that the legislature intended that, so far as regarded the making the river navigable, and the cutting new channels for that purpose, neither public nor private rights should stand in their way? But still they should make good to the public in another shape the means of passage over such ways as they were empowered to cut through. What has been done is not a mere incommoding the passage, leaving the public a partial enjoyment of the highway, but it is a total deprivation of the means of using it. I am not aware that what we now decide will at all clash with what we decided in *R. v. Inhabitants of Kent*.” (Supra.) *Le Blanc* and *Bayley*, Js., concurred.

Where a bridge was erected by a company over a navigable river:—Held, that the company and not the county were liable to repair the bridge.

R. v. Kerrison.

R. v. Bristol Dock Co. (b).]—By an act empowering certain persons to make a floating harbour it was enacted, “that it should and might be lawful for the directors of the company, and they were thereby authorized and required, to make a common sewer in a certain direction therein specified, and also to alter and recon-

As to the liability of a dock company to make a sewer to remove a nuisance occasioned by their works.

(z) 13 East, 220; and see *R. v. Inhabitants of Lindsey*, 14 East, 317.

(a) 3 M. & S. 520.

(b) 6 B. & C. 181.

*Cases.**Repairs of Works.**R. v. Bristol Dock Co.*

struct all or any of the sewers at the mouths thereof, so and in such manner that the sewers might be discharged considerably under the surface of the water in the floating harbour, and also to make such other alterations in the sewers of the city, as might or should be necessary in consequence of the floating of the said harbour." The directors altered several of the sewers, so as to discharge them considerably under the surface of the water in the floating harbour; but the sewage there discharged was so offensive as to be a nuisance to the neighbourhood. It was decided that, under the latter part of the above clause, the directors were authorized and required to make a new sewer, if necessary, to remove the nuisance.

So where a company of adventurers cut an artificial drain which intersected a highway, and a bridge was erected by the company and used by the public, it was held that the company were bound to keep the bridge in repair.

R. v. Inhabitants of Ely.

R. v. Inhabitants of Ely (c).]—Indictment for non-repair of a bridge by a division of a county:—*Plea*, that certain adventurers had, under the authority of a commission of sewers, cut an artificial drain which intersected and obstructed an immemorial highway, and that they had erected the bridge over the drain in the line of the former highway, and not upon the ancient course of any river, and that the former highway had been thenceforth carried over the bridge; that after the making the bridge, the drain and the bridge and large quantities of land, for the purpose of draining which the said drain was made, were vested by act of Parliament in the corporation of the Bedford Level, in trust for the adventurers, with power to the corporation to levy money for maintaining the works; and that the drain was useful to the adventurers and to the corporation, and had been always maintained and repaired by them for their benefit: that the corporation was liable, and of right ought to repair the said bridge. The Court of Queen's Bench decided, that as the interruption of the highway by the adventurers was done for their own benefit, it could be legal only, on the condition of substituting another highway, by a bridge as convenient for the public as the old one; that this condition was a continuing one, and that the plea afforded a good answer to the indictment.

Patteson, J., said—The general rule may be considered to have been established with regard to bridges built before 43 Geo. 3, c. 59, at least from the time of *R. v. West Riding of Yorkshire* (d), in the words of *Ashurst, J.*, "that if a man builds a bridge, and it becomes useful to the county in general, the county shall repair it." In a case by the same name, in 2 *East*, 342, this rule was held to apply to the case of a bridge first built by the trustees of a turnpike road, where no bridge had been before, over a natural rivulet; the bridge was of public utility, and Lord *Ellenborough* assumed that the trustees had authority to build it, and they had power to levy tolls for the repair of the road; but there were no funds specifically provided for the repair of the bridge, and the trustees were not personally liable. Where, however, a navigation company were authorized to take or alter the old highway for their own purposes, only upon condition of leaving another as good in its room, and the company deepening a ford which had been the highway, so as to render it impassable, had made a bridge necessary, and accordingly built it, this court held the condition to be a continuing one; that the company were bound permanently to keep the highway as good for the public, and so to keep the bridge, which was the substituted highway, in repair, *R. v. Kent* (e). And although there are some slight differences between the facts of this case and those of *R. v. Lindsey* (f), yet the principle of decision was substantially the same, and the latter may be considered a full confirmation of the former decision.

After commenting on these cases, his lordship said—It would be safer, therefore, perhaps not to rely on these cases further than as a general affirmance of the general

(c) 19 L. J. (M. C.) 223; 15 Q. B. 827.

(d) 5 Burr. 2594.

(e) Ante, p. 411.

(f) Ibid.

rule. But in *R. v. Kerrison* (g), where a navigation company made a navigable cut across a highway, rendering it impassable, the court held that the owner of the navigation was liable to the repair, though no tolls were paid in respect of passing the bridge, and no funds for its maintenance were distinctly found to exist. And they proceeded on the same principle which had decided the cases in the 13th and 14th East; and that principle seems to be this—undoubtedly a just one—that where the act making the bridge necessary, though authorized to be done, interferes with the public right, is done primarily for private purposes, and the public user, from which the public benefit is inferred, is to be referred only to the act, because made necessary by it (the public, indeed, remaining only with the same convenience which it had before), the authority to do the act is conditional only, equally whether the condition be expressed or implied; and the condition also is in both cases continuing, so long as the act continues whereby the public right is interfered with; and as the obligation here insisted on arises from the parties' own act, which would be unlawful unless such obligation were complied with, the case steers clear of any consideration as to the existence of funds; for the party bringing the duty upon himself for his own purposes, cannot object the want of funds for the performance of it.

It appears to us, that when the adventurers first cut the drain and interrupted the public highway, that act, however authorized by commissioners of sewers, or the powers vested in them, was done for their own use, benefit and convenience, and could be legal only on the condition of substituting another highway, which could be only by a bridge as convenient for the public as the old one; that the public were in truth no gainers by the change; they were by the hypothesis merely placed in the same situation as before; and that the condition which was necessary to legalize the first cutting of the drain, was and is a continuing one; the instant it is broken, the indefeasible rights of the public revive, and the cut becomes a nuisance. We think, therefore, that the plea is in substance good, and that the facts it discloses clearly distinguish it from *R. v. Oxfordshire* (h), where the bridge was built by trustees of a turnpike road, for public purposes only.

There is another fact in this case which does not appear distinctly found in any of the decided cases, namely, that the cut, the banks, and the bridge, are all expressly vested in the corporation by statute; and this is relied on by the counsel for the Crown as making the plea double. But we think it is not set up, nor could be, as alone of power to throw the liability on the corporation, and therefore that it does not open the plea to the objection of duplicity. At the same time we by no means say that it is an unimportant fact, in addition to the others on which we mainly rely.

Priestley v. Foulds (i).]—An incorporated company were authorized by Parliament to make a navigable canal, the construction of which would interfere with an ancient drain. By the statute the company were required to make a drain on each side of the canal, and parallel therewith, in lieu of part of the ancient drain, which would be destroyed. By another section they were required to make such arches, tunnels, culverts, drains or other passages over, under, by the side of, or into the canal, and the trenches, streams and watercourses communicating therewith, and towing-paths on the sides thereof, of such depth, breadth, and dimensions as should be sufficient to convey the water clear from the lands adjoining the canal, without obstructing or impounding the same; and to support, maintain, cleanse and keep in repair all such arches, &c., drains and other passages. It was decided that the

Cases.
Repairs of
Works.
*R. v. Inhabitants
of Ely.*

Liability of canal
company to
cleanse drains.
*Priestley v.
Foulds.*

(g) Ante, p. 411.

(h) 4 B. & C. 194.

(i) 2 M. & G. 175.

Cases.
Repairs of
Works.
Priestley v.
Foulds.

drains made in pursuance of the former section, in lieu of the ancient drain, were to be cleansed by the company, as well as those made in pursuance of the latter section; and that a summary remedy given by the latter section, in case of non-repair by the company, was applicable to a default in cleansing the drains made in lieu of the ancient drains.—*Tindal, C. J.*, “In *R. v. Kent* (ante, p. 411), it was held, that a clause directing the erection of a bridge imposed a continuing obligation. That case appears to me to furnish a key to unlock the meaning of this act of Parliament. There the power of building a bridge in lieu of a ford, which the company were authorized to destroy,—here the power of substituting new drains for the old Fleet drain,—were conferred by the legislature for the particular benefit of the respective companies. This case, therefore, falls within the well-known maxim ‘*qui sentit commodum sentire debet et onus.*’”—*Bosanquet, Coltman and Maule, Js.*, concurred.

Liability of navigation company to repair banks of a channel.

R. v. Bristol Dock Co.

R. v. Bristol Dock Co. (k).—By a dock act certain persons were formed into a company for improving a port, and made proprietors of the works, and were authorized and required to make, complete and maintain a new course or channel for a river, the same to be of equal depth and breadth at the bottom, and with equal inclination of the sides, as the then present river course then had, in those parts thereof which had not been excavated or embanked, or as near as circumstances would admit, except in such parts of the new course as should be cut through rock or stone. A mandamus issued, stating that the company had made and completed a new channel, but that certain parts of the bank, not cut through rock or stone, had since become and were broken down and out of repair, and the inclination of the said side was thereby greatly altered, to the danger of the obstruction of the navigation and damage of all the liege subjects, &c.; and the company were commanded to repair and maintain the said parts of the bank. Return—that the company were not required by the statute nor otherwise liable to repair and maintain the said parts; and that, as near as circumstances had admitted or did admit, they had maintained the new course of equal depth and breadth at the bottom, and with equal inclination of the sides as the river course at the time of the act passing had in those parts which had not been excavated or embanked, and except such parts of the new course as had been cut through rock or stone. It was decided that the first part of the return was bad, as traversing matter of law, and also because a legal liability appeared; that the second part was also bad, as not answering the mandatory part of the writ, but applying only to matter stated in the writ, as a consequence of the omission to repair.

IX. Cases relating to the Liabilities of the Company and their Contractors, for Injuries arising from Negligence, during the Construction of the Railway (l).

Where works were executed for the commission-

Allen v. Hayward (m).—Action against the clerk to the Commissioners of the Dartford and Crayford Navigation, acting under 3 Vict. c. 10, for injuries done to

(k) 2 Q. B. 64; 2 Railw. C. 599.

(l) See also the cases cited in Mr. Manley Smith's Law of Master and Servant, 2nd ed., p. 201 et seq. See also *Steel v. South Eastern R. Co.*, 16 C. B. 550. In *Hole v. Sittingbourne and Sheerness R. Co.*, 30 L. J. (Exch.) 81, the company were held liable for an obstruction caused by a contractor

building a swing bridge which they were authorized to build. See also *Gray v. Pullen*, 32 L. J. (Q. B.) 169, but this judgment was reversed in Exch. Ch., Nov. 1864; *Blake v. Thirst*, 32 L. J. (Exch.) 188; 8 L. T. (N. S.) 251; *West Riding and Grimsby R. Co. v. Wakefield*, 33 L. J. (M. C.) 174. (m) 7 Q. B. 960; 4 Railw. C. 104.

plaintiff's lands by an overflow of water, caused through the negligent execution of certain works charged to have been done by defendants. It appeared that a resolution had been passed by the commissioners, directing their engineer to prepare a specification for certain works which they wished to have executed, and tenders were sent in; and at a meeting of the commissioners they accepted the tender sent in by one Button. The contract contained a clause, "that all parts of the work to be done by Button, as were not in a particular manner specified and described in the contract or plans and specifications, shall be executed in such manner as the surveyor of the said works for the time being shall direct, and in a good and workmanlike manner," under certain penalties. Button did the work under the contract, including the removal of a bank, which was specified in it, which bank he re-erected of insufficient materials, and afterwards let the water in prematurely, which sunk the bank and went over it into the plaintiff's orchard. It was no part of the contract that he should let in the water.

It was contended that the contractor was not the servant of the commissioners, so as to make them liable for the consequences of his negligent execution of the works. The jury found a verdict for plaintiff; and a rule having been obtained to set it aside,

Lord Denman, C. J., now delivered judgment—"The grievance was the overflowing of the plaintiff's orchard by drains imperfectly made. A bank, placed at first too close to an extensive excavation, had been moved backward, but was re-erected of insufficient materials; water was prematurely admitted, which sunk the bank, and went over it into the plaintiff's land. If a proper cess had been made, the evidence was, that the water might have passed away without injury to the plaintiff. All this was done by the contractor; and the defendant contended, that it was not in execution of the works contracted for. I directed the jury that the commissioners could not be liable, unless the damage was done in execution of the contract, stating my opinion that there would be a want of skill or care in being taken by surprise by a bad vein of soil, and not making the bank sufficiently strong to resist the water; but that if the improper introduction by Button of the water had caused the injury, that was not done by their authority, and that they were not liable in this action. The jury found for the plaintiff, and we think properly, on that point. It now seems to us that, if the bank was in itself insufficient and unskilfully constructed, the maker of it is liable for the damage done, though that may have been directly caused by something wrong proceeding from another; and hence, that if the commissioners constructed a weak and dangerous bank, they would be liable for the damage done by water improperly let in, whether by their servant or by a stranger, or by some natural accident. Supposing this to be true, we are then brought to the question, whether the commissioners are responsible for this ill-construction,—whether the contractor is to be regarded as their servant, so that they may be called the makers of this work by his agency. On a careful reference to *Laugher v. Pointer* (n), in which the opinions delivered by Lord Tenterden, C. J., and *Littledale, J.*, must be taken to lay down the correct law;—to *Randleson v. Murray* (o); *Quarman v. Burnett* (p); *Milligan v. Wedge* (q); and *Rapson v. Cubitt* (r),—it seems perfectly clear that, in an ordinary case, a contractor to do works of this description is not to be considered as a servant, but as a person carrying on an independent business, such as the commissioners were fully justified in employing to perform works which they could not execute for themselves, and who was known to all the world as performing them. We find

Cases.

*Negligence
in constructing
Works.*

ers of a navigation, by contract, under a written specification, and by reason of the works therein specified having been ill done, an overflow of water was caused on the plaintiff's lands:—Held, that the contractors, and not the commissioners, were liable to be sued by the plaintiff.

Allen v. Hayward.

(n) 5 B. & C. 547.

(o) 8 A. & E. 109.

(p) 6 M. & W. 499.

(q) 12 A. & E. 737.

(r) 9 M. & W. 710.

Cases.Negligence
in constructing
Works.*Allen v. Hayward.*

here none of the reasons which have prevailed in cases where one person has been held liable for the acts of another as his servant. The learned judges who thought the defendant liable in *Laugher v. Pointer*, might, without inconsistency, have held that these commissioners are not liable. The doubt is raised by the contract, which expressly requires that all such parts of the said works to be done by Button, as are not in a particular manner specified and described in the contract, or the plans and specifications, shall be executed in such manner as the surveyor of the said works for the time being shall direct, and in a good and workmanlike manner; and such execution of the work is secured by penalties. This passage of the agreement would appear to take power from the contractor, and keep it in the hands of the commissioners, or their surveyor; but whatever may be its proper construction or effect, it has no application to the present case, for the bank which failed is a part of the works so specified and described, and for which, therefore, if ill done, the contractor is liable, and the commissioners are not. We are therefore of opinion, that the rule for a nonsuit must be absolute."

So where a company employed a contractor to build a viaduct over a road, and a stone fell on a passenger and killed him:—Held, that the company were not liable to be sued for the negligent acts of the workmen employed by the contractor.

Reedie v. L. and N. W. R. Co.

Reedie v. L. and N. W. R. Co. (r).]—Action by the widow and administratrix of R., to recover damages under 9 & 10 Vict. c. 93 (s). The declaration stated, that the company were possessed of a viaduct over a turnpike road, yet the defendants conducted themselves, in the constructing of the said viaduct, in so careless a manner, that by reason thereof a large stone fell upon R. who was then lawfully passing under the said archway, and killed him.

At the trial, it appeared that R. was passing under the viaduct, which was in the course of erection, when some workmen, employed by the contractors in the execution of the works, forced a block of stone off the parapet, which struck and killed R. on the spot.

By an act passed in 1845, a company was incorporated for the formation of the railway in question. By a deed, made between the company of the one part, and Messrs. Crawshaw of the other part, the Messrs. C. covenanted to make and complete a portion of the railway and works connected therewith, according to the specifications; and it was provided, that the company should have a right of watching the progress of the works and, if the contractors employed incompetent workmen, the company should have the power of dismissing them. Messrs. C. proceeded to execute the works, and, while they were in progress, another act passed, whereby it was enacted that the railway, with the undertakings thereof, as well as those which had been commenced, as those which had not, and all the real and personal estate of the company, should (subject to the existing debts, liabilities and contracts of the company) be vested in the defendants, and might be lawfully executed by them in the same way as they might have been executed by the said first-mentioned company. After the passing of this second act, Messrs. C. proceeded with their work, and during that time the accident occurred. A verdict was found for the plaintiff, leave being reserved to move to enter a nonsuit.

Rolfe, B., delivered the judgment of the court.—It appears to us quite clear, that after the passing of the second act, the contract with Messrs. C. was transferred to the present defendants, so as to make them liable to the same extent precisely, as the original company would have been, if the second act had not passed. But, after full consideration of the subject, we are of opinion that neither the defendants nor the original company are liable. In *Quarman v. Burnett (t)*, this court decided,

(r) 4 Exch. 244; 20 L. J. (Exch.) 65; 13 Jur. 659; 6 Railw. C. 184. This case has been followed in America, *Simons v. Monier*, 29 Barbour's Rep. 420.

(s) See this statute, post, Part II. Chap. I. Sect. 5.

(t) 6 M. & W. 499.

that the liability to make compensation for an injury arising from the neglect of a person driving a carriage, attaches only on the driver, or on the person employing him. The liability of any one, other than the party actually guilty of any wrongful act, proceeds on the maxim—" *Qui facit per alium facit per se.*" The party employing has the selection of the party employed; and it is reasonable, that he who has made choice of an unskilful or careless person to execute his orders, should be responsible for any injury resulting from the want of skill or want of care of the person employed; but neither the principle of the rule, nor the rule itself, can apply to a case where the party sought to be charged does not stand in the character of employer, to the party by whose negligent act the injury has been occasioned. The doctrine of *Quarman v. Burnett* has since been acted on in *Rapson v. Cubitt* (u), in *Milligan v. Wedge* (x), and again in *Allen v. Hayward* (y). By these authorities, we must consider the law to have been settled; and the only question is, whether the law so settled is applicable to the facts of this case. To show that it was not, it was argued, that there is a recognized distinction on this subject between injuries arising from the careless or unskilful management of an animal or other personal chattel, and an injury resulting from the negligent management of fixed real property. In the latter case, it was contended that the owner is responsible for all injuries to passers-by or others, howsoever they may have been occasioned; and here it was said, that the defendants were, at the time of the accident, the owners of the railway, and so are the parties responsible. This distinction as to fixed real property is adverted to by Mr. Justice *Littledale*, in his very able judgment in *Laugher v. Pointer* (z); and it is also noticed in *Quarman v. Burnett*. But in neither of these cases was it necessary to decide whether such a distinction did or did not exist. The case of *Bush v. Steinman* (a), where the owner of a house was held liable for the act of a servant of a sub-contractor, acting under a builder employed by the owner, was a case of fixed real property. That case was strongly pressed in argument, in support of the liability of the defendant, both in *Laugher v. Pointer* and *Quarman v. Burnett*; and as the circumstances of these two cases were such as not to make it necessary to over-rule *Bush v. Steinman*, if any distinction in point of law did exist in cases like the present, between fixed property and ordinary moveable chattels, it was right to notice the point. But on full consideration, we have come to the conclusion that there is no such distinction, unless perhaps in cases where the act complained of is such as to amount to a nuisance (b); and, in fact, that, according to the modern decisions, *Bush v. Steinman* must be taken not to be law, or, at all events, that it cannot be supported on the ground on which the judgment of the court proceeded.

It is not necessary to decide, whether in any case, the owner of real property, such as land or houses, may be responsible for nuisances occasioned by the mode in which his property is used by others, not standing in the relation of servants to him, or part of his family. It may be, that in some cases, he is so responsible. But then his liability must be founded on the principle, that he has not taken due care to prevent the doing of acts, which it was his duty to prevent, whether done by his servants or others. If, for instance, a person occupying a house, or a field, should permit another to carry on there a noxious trade, so as to be a nuisance to his neighbours, it may be that he would be responsible, though the acts complained of were neither his acts nor the acts of his servants. He would have violated the rule of law—" *Sic utere tuo ut alienum non lædas.*" This is referred to by Mr. Justice

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*Reedie v. London
and North-Western
R. Co.*

(u) 9 M. & W. 710.

(x) 12 A. & E. 737.

(y) Ante, p. 414.

(z) 5 B. & C. 559.

(a) 1 B. & P. 404.

(b) See post, 421.

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Cresswell, in delivering judgment in *Rich v. Basterfield* (c), as the principle on which parties possessed of fixed property are responsible for acts of nuisance occasioned by the mode in which the property is enjoyed. And, possibly, on some such principle as this, the case of *Bush v. Steinman* may be supported. But certainly that doctrine cannot be applied to the case now before us. The wrongful act here could not, in any possible sense, be treated as a nuisance. It was one single act of negligence, and, in such a case, there is no principle for making any distinction, by reason of the negligence having arisen in reference to real and not to personal property. If the defendants had employed a contractor carrying on an independent business, to repair their engines or carriages, and the contractor's workmen had negligently caused a heavy piece of iron to fall on a bystander, it would appear a strange doctrine to hold, that the defendants were responsible. Mr. Justice *Littledale*, in his very able judgment in *Laugher v. Pointer*, observed, that the law does not recognize a several liability in two principals, who are unconnected; if they are jointly liable, you may sue either, but you cannot have two separately liable. This doctrine is one of general application, irrespective of the nature of the employment; and, applying the principle to the present case, it would be impossible to hold the present defendants liable, without at the same time deciding that the contractors are not liable, which it would be impossible to be contended. It remains only to be observed, that in none of the more modern cases has the alleged distinction between real and personal property been admitted. In *Milligan v. Wedge*, Lord *Denman* expresses doubt as to the existence of such a distinction in any case; and in the more recent case of *Allen v. Hayward*, the judgment of the court proceeded expressly on the ground that the contractor, in a case like the present, is the only party responsible. The last case so closely resembles the present, that even if we had not considered the decision right, we should probably have felt bound by it. But we see no reason to doubt its perfect correctness. It seems to follow as a necessary corollary from the principle of the preceding cases, and entirely to govern this.

Our attention was directed to the provisions of the contract, whereby the defendants had the power of insisting on the removal of careless or incompetent workmen; and so it was contended they must be responsible for their non-removal; but this power of removal does not seem to us to vary the case. The workman is still the servant of the contractor only, and the fact that the defendants might have insisted on his removal, if they thought him careless or unskilful, did not make him their servant. In *Quarman v. Burnett*, the particular driver was selected by the defendants; but this was held not to affect the liability of the driver's master, or to create any responsibility in the defendants; and the same principle applies here. On these grounds, this rule must be made absolute.

[In the next case in this collection (*Knight v. Fox*), *Parke*, B., speaking of the judgment in the above case, says, "that means a nuisance existing in a man's fixed property, as if the defendants had been the owners of the bridge, and in consequence of want of repair something fell from it and injured a passer-by, then it would be a question whether they would not be liable."]

And where a sub-contractor was employed to erect a scaffold:—Held, that the party who employed him was not liable for injuries received by plaintiff, who fell over

Knight v. Fox (d).]—Case against defendants for negligence. The declaration stated that defendants were, by themselves and servants, in the course of erecting a railway bridge over a public street and highway, and for that purpose had erected a scaffold upon the highway. It then stated that defendants negligently fixed a piece of timber across the footpath of the highway, and kept it there by night and day, without any light or other guard or precaution to warn passengers of the same

(c) 4 C. B. 802.

(d) 5 Exch. 721; 20 L. J. (Exch.) 9; 14 Jur. 963.

being there, or to prevent them falling over it; whereby plaintiff stumbled over the said piece of timber and was thereby thrown down and injured. Pleas, the general issue; and that defendants did not, either by themselves or servants, erect the scaffold or fix the piece of timber.

At the trial, it appeared that the London and Blackwall Co. entered into a contract with B. to effect the necessary works; who thereupon made a sub-contract with defendants, to construct a tubular bridge, principally of iron, to go across a public highway. Defendants resided at Birmingham, and paid C. a salary to attend to their general business; C. also entered into a contract with them, for the further sum of 40*l.*, to erect the scaffolding necessary for the bridge, defendants finding the materials, including gas-lights. It appeared that C. kept separate books, and himself engaged and paid the men for erecting the scaffolding. In the course of the work, one of the poles rested upon a sleeper, which was above the level of the pavement, and there being only one light placed near, the obstruction was not sufficiently visible, and plaintiff fell over it, and broke her leg. Additional lights were then put up, and these defendants paid for. On these facts it was objected that defendants were not liable; and plaintiff was nonsuited, with leave reserved to move, it being agreed that if there were any mode of putting the case to the jury in which defendants might fairly have been found liable, it should be taken that the jury had so found.

Parke, B.—I am of opinion there should be no rule granted in this case. C. was not the servant of the defendants for this purpose; quoad the contract for the scaffolding, he was quite independent. It is the same as if the defendants had contracted with a third person.

Alderson, B.—The only question is, whether the negligent act is the act of a servant of the defendants as such servant; if so, they are responsible. But it is clear upon the evidence that C. was a sub-contractor, and acting on his own account.

Pollock, C. B.—I agree that there ought to be no rule. It struck me strongly at the trial, that if B. were not liable because he had made the sub-contract with the defendants, so they were not to be made liable for the negligence of their sub-contractor. The payment for the additional lights was explained by the terms of the contract, which required the defendants to find the materials; and the lights were considered as part of the materials.—Rule refused.

Overton v. Freeman (e).]—Action for leaving a quantity of stones on a public highway, whereby defendant broke his leg by a fall. At the trial, before *Jervis, C. J., W.*, a witness for plaintiff, stated that he had placed the kerb-stones in a street in the course of laying down some pavement there; that he was a sub-contractor, and had contracted with defendants to lay down the pavement, which he was doing under the direction of the engineer and surveyor of certain commissioners, who had, in the first instance, contracted with defendants for the work required throughout a district. W. himself paid the men who laid down the stones which caused the injury. This being the only evidence with regard to the manner in which the stones were placed there, the plaintiff was nonsuited. On motion for a new trial,

Maule, J., said, after stating the facts—The question is, whether the defendants are the proper persons to be made liable for this act. It is urged that they, having committed a public nuisance, are therefore liable; and if they have done so, no doubt they are liable. It is, indeed, urged that there is some greater liability in

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a part of the scaffold left by night without lights to give notice of the obstruction.

Knight v. Fox.

So a contractor employed by commissioners of pavements, who had employed a sub-contractor to lay down pavements in a street, was held not to be responsible for the consequences of an accident occasioned by the negligence of a sub-contractor.

Overton v. Freeman.

(e) 21 L. J. (C. P.) 52; 11 C. B. 867; 16 Jur. 65.

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respect of the act being a public nuisance, than in the case of an injury of a more private character. I cannot see that is a ground for holding the defendants liable (f). It seems to me rather that the liability of a person for a public wrong is and ought to be less extensive than for a civil injury. A civil liability often arises where no harm was meant, and where negligence only is charged. But, in truth, you cannot draw a parallel between the two cases. As far as it goes, however, the distinction between the two is not favourable to the view of the plaintiff. The question here is, whether the defendants did commit the nuisance in question. If they employed the persons who actually laid down the stones as their servants, no doubt they did commit it. But I cannot find any instance in which a person has been held liable in such a case as the present—unless it be in *Matthews v. West London Waterworks Co.* (g). It may be observed that that is only a Nisi Prius report; the particular circumstances of the case are not detailed; and it may be, as has happened in several cases, that if the court were to inform itself by obtaining the briefs used at the trial, what now certainly appears rather paradoxical, might be explained by the facts of the case. The case, as it stands, certainly somewhat countenances the position of the learned counsel. The only other case in his favour is *Bush v. Steinman* (h); but that decision is certainly considered erroneous in the latter cases cited, which ought not to be disturbed. One mode of inquiring whether the defendant is liable in cases like the present is, to see whether the act was done by his servant. If the person who committed the act can be so considered, the defendant will be liable; but he cannot be so considered if he is a sub-contractor. If a person is employed to do the particular thing done, the cases show that the person employing him is liable. So, in this case, the sub-contractor might be liable for the acts of his servants; but it does not follow that the defendants who contracted with him are liable for his acts. I think that this case falls within the principle of those cases which decide, that, when work is being done by a sub-contractor, he is civilly and criminally liable, and the contractor not liable. I do not mean that in no case is a contractor liable, but only that the simple character of contractor does not render him liable. He is liable if he personally interferes in the matter; and in one case it is said, "If he sanctions it." But here the defendants are sought to be charged simply because they have contracted with another man to do the work, whose servants have been guilty of negligence. They are guilty of no negligence. They contract with a person who does what is wrong, and he alone is liable. I think the rule must be refused.

Cresswell, J.—I think that the modern cases of *Rapson v. Cubitt* (i), *Reedie v. L. and N. W. R. Co.* (k), and *Knight v. Fox* (l), are quite conclusive. It may be true that the defendants, not having exercised any personal interference in the work, not having sanctioned the placing of the stones, but only having contracted for a lawful thing, cannot be made liable for the unlawful act of the person with whom they contracted. The defendants did not contract that the sub-contractors should lay one stone upon another so as to create a public nuisance. Paving the street was not a public nuisance. They are no parties to the laying of the stones being a public nuisance. If they had contracted that a public nuisance should be committed, it would be another matter. I do not see that the act being a public nuisance makes any difference as to the liability of the defendants.

Williams, J.—The plaintiff's counsel did not contend, in this case, that the sub-contractor was the servant of the defendants, but he said, that in cases where the

(f) See *Ellis v. Sheffield Gas Co.*, post, 421.

(g) 3 Campb. 403.

(h) 1 B. & P. 404.

(i) 9 M. & W. 710.

(k) Ante, p. 416.

(l) Ante, p. 418.

act complained of constitutes a public nuisance, the sub-contractor is liable. It certainly has been thrown out in some cases, that this might be so, but in *Knight v. Fox* it was pointed out by *Parke, B.*, that that doctrine does not apply in such a case as this.

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Jervis, C. J.—It seems to me that *Knight v. Fox* is an express authority, that this action was not maintainable against the defendants.—Rule refused.

Ellis v. Sheffield Gas Co. (m).]—Action for an injury sustained by plaintiff, through the negligence of defendants.

But if a party employs a contractor to do an illegal act, he is liable for the carelessness of the contractor's workmen.

It appeared at the trial that defendants contracted with certain parties for the laying of gas-pipes along some of the streets in Sheffield, for which it was necessary to remove the pavement and dig trenches; and in consequence of the negligent manner in which the works were done, plaintiff sustained the injury. It was admitted that defendants had no act of Parliament enabling them to execute the necessary works. A verdict having been found for plaintiff, upon motion to enter it for defendant, in pursuance of leave reserved, it was contended that the contractors, not defendants, were liable.

Ellis v. Sheffield Gas Co.

Lord Campbell, C. J.—There can be no rule in this case. In the cases referred to there was nothing ordered but what the parties had a right to order, and therefore the employer would not be liable for the negligence of the contractor in the course of carrying out his contract, for there the relation of master and servant does not exist. But this is a different case; here the defendants employ a person to do what was unlawful, and the act which caused the injury of which the plaintiff complains, and is the ground of this action, was done in the course of executing those orders. Now, the defendants had certainly no right to lay open the streets in Sheffield; it was unlawful in them to take up the stones and lay down pipes, and it was in consequence of this being done that the injury happened to the plaintiff. They employed a person to do this unlawful act, and are liable to the plaintiff for the injury sustained by him.

Wightman, J.—The ground of distinction between this case and those cited is, that here the company contracted for the commission of an unlawful act. If it had not been for the culpable act of the defendants, the injury complained of could not have arisen; by their orders the pavement was taken to the place where it was left, and it was not replaced; hence the injury to the plaintiff, which is the ground of the action.

Erle, J.—The act of the contractor was an act done by him under the order and direction of the defendants, which distinguishes this case from those where the defendants were held not to be liable.—Rule refused.

Grote v. Chester and Holyhead R. Co. (n).]—Action for injuries received by plaintiff by the breaking down of a bridge. Injuries had been received by plaintiff, by the breaking down of a bridge upon defendants' line of railway, during the transit of a passenger-train. The services of an eminent engineer had been engaged in the construction of the work. The learned judge told the jury that the question was, whether the bridge was constructed and maintained with sufficient care and skill, and of reasonably proper strength, with regard to the purpose for which it was made; and, that if they should think not, and that the accident was attributable to any such deficiency, plaintiff would be entitled to recover. The counsel for defendants objected, that defendants would not be liable unless they had been guilty of negligence either in constructing or maintaining the bridge. His lordship,

As to extent of company's liability when a railway bridge falls and injures a passenger travelling on the railway.

Grote v. Chester and Holyhead R. Co.

(m) 23 L. J. (Q. B.) 42; 2 F. & B. 767. (n) 2 Exch. 251.
See also *Sadler v. Henlock*, 4 E. & B. 570.

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however, left the question to the jury, subject to his previous direction, and a verdict was given for plaintiff. Upon motion for a new trial, *Pollock*, C. B., said—"It does not distinctly appear whether or not the attention of the jury was directed to the proposition, that if a party, in the same situation as that in which the defendants are, employ a person who is fully competent to the work, and the best method is adopted, and the best materials are used, such party is not liable for the accident. If the jury have been directed in conformity with this rule, there is no ground for the present application. It cannot be contended that the defendants are not responsible for the accident, merely on the ground that they have employed a competent person to construct the bridge. Upon this point we will consult our learned brother." On a subsequent day his lordship said—"We have consulted the learned judge, who reports that he directed the jury in conformity with the above proposition, and therefore there will be no rule."

X. Other Cases not included in the foregoing Subjects.

Whether a nuisance may be excused on the ground that public benefits have been attained by the works which caused the nuisance—*quære*.

R. v. Russell.

R. v. Russell (o).]—Upon an indictment for nuisance in a navigable river, by erecting staiths there for loading ships with coals, the jury were directed to acquit if they thought that the abridgment of the right of passage occasioned by these erections was for a public purpose, and produced a public benefit, and if the erections were in a reasonable situation, and a reasonable space was left for the passage of vessels on the river; and the judge pointed out that by means of the staiths coals were supplied at a cheaper rate, and in better condition, than they otherwise could be, which was a public benefit:—Held, by *Bayley* and *Holroyd*, Js., that this direction to the jury was proper (p); Lord *Tenterden*, C. J., diss.

If a statute authorizes the use of locomotive engines on a railway running parallel with an ancient highway, an indictment for a nuisance will not lie, although the horses of persons travelling on the highway are frightened by the engines.

R. v. Pease.

R. v. Pease (q).]—By an act, reciting that a railway would be of great public utility, and would assist the agricultural interest and the general traffic of the country, power was given to a company to make such railway according to a plan deposited, from which they were not to deviate more than 100 yards. By a subsequent act, the company were empowered to use locomotive engines upon the railway. The railway was made parallel to an ancient highway, and in some places within five yards of it. It did not appear whether or not the line could have been made to pass at a greater distance. The locomotive engines frightened the horses of persons using the highway. At the trial of an indictment against the company for a nuisance, it was decided that this interference with the rights of the public must be taken to have been sanctioned by the legislature. The following judgment was delivered:—"The question is, whether the statute gives an authority to the company to use locomotive engines on the railway absolutely, or only with some implied condition or qualification, that they should employ all practicable means to protect the public against any injury from them; and those means were, on the argument, suggested to be, the altering the course of the railroad, or the erection of fences or screens of sufficient height to exclude the view of the engines from the passengers on the highway. Now, the words of the clause clearly give to the company the unqualified authority to use the engines; and we are to construe provisions in acts of Parliament according to the ordinary sense of the words, unless such con-

(o) 6 B. & C. 566.

(p) But see *R. v. Ward*, 4 A. & E. 384; *R. v. Betts*, 16 Q. B. 1022; *R. v. Longton Gas Co.*, 29 L. J. (M. C.) 118; *R. v. Train*, 31 L. J. (M. C.) 169; 2 Best & S. 640, in

which a tramway laid down along a public highway was held to be a nuisance.

(q) 4 B. & Ad. 30; 1 N. & M. 690; see *supra*, note (p).

struction would lead to some unreasonable result, or be inconsistent with, or contrary to, the declared or implied intention of the framer of the law, in which case the grammatical sense of the words may be extended or modified; instances of which are to be found in *Eyston v. Studd* (r). Let us, then, consider whether there is anything unreasonable or contrary to the express or implied intention of the legislature, in construing these words in their ordinary sense, and without any such addition or qualification as before mentioned. It is clear that the makers of these acts had in view the construction of a railroad in a certain defined line, which had been delineated on a map, and from which line the road was not to deviate more than 100 yards. The legislature, therefore, must be presumed to have known that the railroad would be adjacent for a mile to the public highway, and consequently that travellers upon the highway would be in all probability incommoded by the passage of locomotive engines along the railroad. That being presumed, there is nothing unreasonable or inconsistent in supposing that the legislature intended that the part of the public which should use the highway should sustain some inconvenience for the sake of the greater good to be obtained by other parts of the public, in the more speedy travelling and conveyance of merchandize along the new railroad. Can any one say that the public interests are unjustly dealt with, when the injury to one line of communication is compensated by the increased benefit of another? So far is such a proceeding from being unreasonable, that it was held, by the majority of the judges, in *R. v. Russell* (s), that a nuisance was excusable on that principle, at common law; and whether that be the law or not, at least it is clear that an express provision of the legislature, having that effect, cannot be unreasonable. It is true that the same object, that of giving one part of the public the benefit of the use of these engines, might have been effected without the same injury to the other part using the road, if the act had imposed on the company the obligation of erecting a sufficient screen at their own cost, or had provided that the line of road should be different at that place; but it is by no means necessary to imply such an obligation in order to make the clause reasonable and consistent, for it has been shown to be so without it; and it is natural to suppose that if such a condition had been intended, it would have been particularly expressed. For these reasons, we think that the defendants were justified."—Judgment for the defendants.

Cases.

Miscellaneous.

R. v. Pease.

R. v. Morris (t).]—Defendant, proprietor of a colliery, made a railroad from it to a seaport town. The railroad was 400 yards long, and was laid upon a turnpike road, which was narrowed so far, that in some places there was not a clear space for two carriages to pass. Defendant allowed the public to use his railroad, paying a toll. It was decided, that the facility given to the general traffic with the seaport, and particularly to the conveyance of coals, &c., thither, was not such a convenience as justified the obstruction of the highway.

Construction of a special act which authorized the making of a railway on a turnpike road.

R. v. Morris.

By an act, authority was given to all persons to lay wagon-ways along or across any of the roads mentioned in the act (of which the turnpike road in question was one), but the parties so doing were to keep such roads in repair for twenty yards on each side of the wagon-way so laid down. It was decided, that the act did not authorize the laying of such wagon-way, where there were not twenty yards of road on each side.

By a statute, a company was empowered to make a railway through certain districts. By sect. 5, they were directed to form new roads in lieu of any existing ones that might be injured by their railway. Sect. 70 empowered proprietors of

(r) Plowd. 463; and Bac. Abr. tit. "Statute," I.

(s) Ante, p. 422.

(t) 1 B. & Ad. 441.

*Cases.**Miscellaneous.**R. v. Morris.*

lands, mines, &c., to make railways through their own lands and those of other persons consenting, and across and along any road or roads to communicate with the principal railway; and no reference was made to any former limitation of powers. On these facts it was decided, that the power in this clause was not absolutely given, but must be subject to the provision of sect. 5, or to the condition of leaving space enough, independent of the railways, for the public to pass.

Construction of a special act, as to the powers of the company to lay down runs on a road adjoining to the railway, for the transit of goods to a wharf.

London and Brighton R. Co. v. Cooper.

London and Brighton R. Co. v. Cooper (u).—The preamble of an act, after reciting that the establishment of a railway communication between London and Brighton would be of great public advantage, enacted (sect. 3), that it shall be lawful for the company to make a main line of railway and branches, with all proper warehouses, wharfs, and all other suitable works, communications, approaches and conveniences attached to or connected with the same. By sect. 12, the usual powers are conferred for making and maintaining the railway, and to make upon, across or over any roads, &c., such roads, ways, cuttings, &c., as the company shall think proper. The company having purchased a private wharf, separated from one of their terminus stations by a turnpike road, laid down on the road stone blocks, so as to form two runs or stone-ways, level with the road, for the purpose of facilitating the passage of goods from the wharf, across the road to the station. It was decided, that the company were not authorized to interfere with the road in such a manner; and an injunction which had been granted to restrain the trustees of the road from removing the stone blocks was dissolved, although, in the opinion of the court, no damage could result from the stone blocks, either to the road, or the passengers upon it.

Lord Cottenham, C., said—"The question is, whether I can find in this act any reasonable doubt that what the company have done is supported by their act; and after paying great attention to the clauses to which I have been referred, I cannot find any one which gives them even a colour of title. The 12th section, no doubt, is as large as possible in describing what the company may do; but there are those words at the commencement which limit the whole operation: it must be for the purposes and subject to the provisions and restrictions of the act. Not only, therefore, must you find words in the enacting clause, sufficient to justify what is done, but you must find that what is intended to be done, under that power, is for the purposes and subject to the provisions and restrictions of the act. [Here his lordship described the works complained of.] However, this is not for the purposes of the railway itself, and is therefore not a work within the meaning of the section. There are provisions enabling the company to deal with the turnpike road, if it is for the purposes of the railway; but if they wish to make another road, they cannot take the turnpike road for that purpose. What the company have done to this road is not for the purposes of the act, or within its provisions. If it is a common road of communication made for the purposes of easy access to the railway, then I do not find anything in the act authorizing the company to deal with the road at all."

Construction of railway act as to powers to take lands required to make the railway. Questions of practical science in dispute may be referred to an engineer, and the

Webb v. Manchester and Leeds R. Co. (x).—The Manchester and Leeds R. Act (sect. 94) empowers the company to enter into and upon lands according to the provisions and restrictions of the act, and, in or upon such lands, or in or upon lands adjoining thereto, to bore, dig, cut, embank, and remove and use, any earth, stone, gravel or sand, or any materials or things which may be dug or obtained therein, or otherwise in the execution of the powers of the act, and which may be

(u) 2 Railw. C. 312.

(x) 4 M. & Cr. 116; 1 Railw. C. 576.

See *Manser v. Northern and Eastern Counties R. Co.*, ante, 395.

proper or necessary for making, maintaining, repairing or using the railway and other works by the act authorized, or which may obstruct the making, maintaining or using the same; and it empowers the company, according to the provisions and restrictions of the act, to make inclined planes, tunnels, embankments, bridges, &c. Sect. 96 enacts, that the lands to be taken for the line of the railway shall not exceed twenty-two yards in breadth, except where a greater width may be required for either embankments or cuttings.

Semble, that the company have not under these clauses power, by compulsory process, to purchase land for the purpose of making an embankment upon other and lower land on a different part of the line.

A point involving questions of practical science being in dispute, and the affidavits being conflicting, the evidence was, at the suggestion of the court, and with the consent of both parties, referred to an engineer for his report on the question in dispute, and the conclusion of the engineer with respect to the facts was adopted by, and made the ground of the order of, the court (*y*).

A railway company will not be prevented by injunction from taking lands for purposes warranted by their act, on the ground that, previously to the filing of the bill, and before the necessity of taking it for such purposes was made known to the plaintiff, the company had endeavoured to take the same lands for other purposes not so warranted.

Ambiguous words in acts of Parliament, authorizing a public company to take land by compulsory process, are to be construed against the company and in favour of private property.

Rowe v. Shilson (z).]—An embankment company was, by an act of Parliament (not limited in duration), empowered to make a road, and to erect turnpikes upon or across “any lanes or ways leading or that might thereafter lead out of the same,” and to take tolls at such turnpikes. By subsequent acts another company was empowered to make a railway, and it was enacted, that all persons should have free liberty to use the same, with carriages properly constructed, upon payment only of such rates and tolls as should be demanded by the railway company, not exceeding the sums mentioned in that act. The railway was afterwards made, and crossed the embankment company’s road. It was decided that the railway, though made and opened to the public by act of Parliament, was a “way” within the meaning of the first-mentioned act. Secondly, that the clause in favour of the public in the railway act did not take away the vested right of the embankment company to their tolls; and, consequently, that they might take toll of persons crossing their road upon the railway.

Cases.

Miscellaneous.

court will afterwards adopt his report.

Webb v. Manchester and Leeds R. Co.

When a railway company are liable to pay tolls for crossing a turnpike road.

Rowe v. Shilson.

Attorney-General v. Eastern Counties R. Co. (a).]—By sect. 100 of an act it was enacted, “That where any bridge shall be erected by the company for the purpose of carrying the railway over or across any turnpike road, the span of the arch of such bridge shall be formed, and shall at all times be and be continued, of such width as to leave a clear and open space under every arch of not less than twenty-five feet.”

The company erected a temporary bridge across a turnpike road by the side of a permanent bridge, for the purpose of carrying spare earth over the road, whereby the road was narrowed to less than twenty-five feet under the bridge, and an injunction was thereupon applied for to prevent the company from using the bridge.

A temporary bridge across a turnpike road held to be within the provisions of a section in a railway act; but an injunction was refused, and, in lieu thereof, the company were put under certain terms.

(*y*) By 15 & 16 Vict. c. 80, s. 42, the Court of Chancery may now require the assistance of engineers and other scientific persons, and act upon the certificate of such

persons.

(*z*) 4 B. & Ad. 726.

(*a*) 3 Railw. C. 337.

*Cases.**Miscellaneous.*

*Attorney-General
v. Eastern
Counties R. Co.*

Sir *K. Bruce*, V. C.—I am of opinion that, although the bridge is a temporary one, and adjoining the regularly made bridge, yet sect. 100 has not been complied with, and, on that ground at least, what has been done is illegal; and taking the whole act together, I think there has been an infraction of the law, and that, too, without any favourable circumstances. No case of great practical inconvenience has been made out, and I do not think it necessary to interfere by injunction. The court will exercise its discretion according to circumstances, and although there may have been an infraction of the law, it will endeavour to do substantial justice to one party without imposing unnecessary hardship on the other, especially in a case where the legal tribunals are open. [His Honor suspended the injunction, and put the company under terms.]

Where money was paid on the withdrawal of the opposition of a landowner to a railway bill pending in Parliament: Held, upon the construction of the agreement entered into, that the company were bound to make proper watering-places for cattle in certain fields intersected by the railway.

*R. v. York and
North Midland
R. Co.*

R. v. York and North Midland R. Co. (b).—By a railway act the company were required, sect. 88, “to make proper watering-places for cattle, in all cases where, by means of the railway, the cattle of any persons occupying lands adjacent thereto should be deprived of access to their ancient watering-places.” After this act passed, and during the progress through Parliament of a subsequent act for amending the first act, by an indenture between the railway company and M., in consideration of M.’s withdrawing all opposition to the bill, the company covenanted “that they would pay to M., as and for the special damage to be thereby occasioned to his estate and mansion-house, 5,000*l.*; and that whenever any close, &c., of M. should be intersected by the railway, the different parts adjoining should be thrown together and levelled, &c.; and that the company should make and complete such good and sufficient fences, drains, gates, stiles and other conveniences, as might be necessary for the re-dividing of the fields which might be intersected by the railway, and for laying them to the adjoining fields of the same estates for the purpose of convenient occupation.” The 5,000*l.* were paid by the company, and under the indenture M. had given notice to the company to make certain fences, drains, crossings, gates, and also ponds in portions of the lands which had been intersected and cut off from the ancient watering-places. On the refusal of the company to make such ponds or watering-places, a mandamus was applied for, and a return made.

Lord *Denman*, C. J.—The defendants say they executed the works required, except the ponds, and they conclude by alleging that the cutting off of ponds and watering-places, and damages occasioned thereby, were part of the special damages covered by the 5,000*l.*; and further, that the ponds they are required to make were not conveniences within the meaning of the indenture last set forth. We are of opinion the indenture furnishes no sufficient answer to the writ. The special damages for which the 5,000*l.* were paid are evidently such as were peculiar to M. in the alteration of the line, of whatever nature they may be, and not such damages as might happen to any person whose lands were intersected; such damages are, in the very clause of the indenture, pointed out as ordinary damages, and sect. 88 provides for them in terms. The indenture was made long after the act, and the clause in the indenture seems almost exactly to refer to that section, among others, in the act. With respect to the other clauses in the indenture, it is plain the words “conveniences” there used does not apply to all things necessary for the occupation of the land, but to all things necessary for the re-dividing and laying the intersected closes to the adjoining land for the purpose of convenient occupation—it is the laying the lands together to which those words must be applied, not to making fences and other conveniences; added to which, sect. 88 obliges the com-

pany to supply water, and gives them power to go even over the lands of a third person, which, if the clause of the indenture were to receive the construction of the defendants, would relate only to making ponds on the lands of M. At all events, it cannot alter the obvious meaning of the indenture itself.—Peremptory writ of mandamus awarded (c).

(c) A writ of error was afterwards brought, and the court reversed the decision, on the ground that the writ of mandamus required more than one watering-place to

be made, without disclosing any obligation on the part of the company to make more than one. See *York and North Midland R. Co. v. Milner*, 15 L. J. (Q. B.) 379.

Cases.

Miscellaneous.

R. v. York and North Midland R. Co.

CHAPTER IX.

JURISDICTION OF THE BOARD OF TRADE OVER RAILWAYS.

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I. *Origin of the Jurisdiction of the Board.*

WE propose to give a short sketch of the manner in which the legislature has endeavoured, by means of a public board, to exercise a control over the proceedings of railway companies. The parliamentary powers now entrusted to the Board of Trade derive their origin from recommendations which have, from time to time, ema-

nated from committees appointed by Parliament. As early as 1839, a Select Committee on Railways, appointed by the House of Commons, expressed a strong opinion that a board would be required to superintend railways, "for the purpose of protecting the weak against the strong, and counteracting the evils incident to monopoly(a);" but the committee did not recommend that the proposed board should interfere with railway legislation.

In 1841, another committee, which was appointed by the Commons, "to consider whether it was desirable for the public safety to vest a discretionary power of issuing regulations, for the prevention of accidents upon railways, in the Board of Trade; and if so, under what conditions and limitations,"—by their report negatived the proposition thus submitted to them, and recommended that the Board of Trade should exercise their supervision over railways, in the way of suggestion, rather than by positive regulations.

The next Select Committee, appointed February 5th, 1844, presented six reports to the House of Commons within as many months, and many of the statutory powers given to the Board of Trade derive their origin from the recommendations and suggestions made in these reports. The committee state that they entered upon their inquiries with a strong prepossession against any general interference by the government in the management and working of railways, and that they had not seen cause to alter their first impressions upon that subject. But with regard to railway legislation, they were convinced that it was alike clear, from reason and from experience, that it should thenceforward be subjected to an habitual and effective supervision on the part of the government.

The committee also recommended "that an efficient supervising power should be constituted on the part of the public, to assist the judgment of the houses of legislature, and that general principles should be laid down to guide its proceedings;" and, finally, they recommended that railway bills should for the future be submitted to the Board of Trade, previously to their coming under the notice of Parliament, with regard to certain enumerated subjects.

But the committee stated it to be their opinion, that such reports should on no account be regarded in any other light than as intended to afford to Parliament,—first, additional aid in the elucidation of the facts by the testimony of witnesses, competent by knowledge, habit and opportunity, and officially responsible; and, secondly, recommendations founded upon such elucidation: that their purport should be, not in any case to give the absolute advice that a given railway should be made, but to state whether or not there were public reasons which ought, in the opinion of the department, to be

(a) Second Report, 1839.

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decisive against it, or whether it ought to be postponed until its merits could be examined in connection with those of some other scheme, or which of two or more contending schemes appeared preferable, in the event that only one should appear likely to receive the sanction of Parliament. And for the purpose of carrying these suggestions into effect, the committee recommended that the railway department of the Board of Trade should be enlarged, and its organization improved.

Parliament subsequently adopted these recommendations; and, by various resolutions embodied in the Standing Orders of both houses of Parliament, it was required that the Board of Trade should be furnished with certain documents and other information, to enable them to exercise their then intended supervision over projected railway schemes; and during the session of 1845, the Board of Trade reported upon the numerous and very important railway schemes which came before Parliament in the course of that session (*b*).

The experiment thus made did not prove successful (*c*); and, after the reports we have mentioned had been made, it was deemed desirable by the board to make some alterations in the mode of conducting the business of the railway department, which was carried into effect by a minute bearing date the 10th July, 1845.

Amongst other things, the lords of the committee directed, by this minute, that proper steps should be taken for submitting to the two houses of Parliament (*d*) the necessity of adopting resolutions requiring the promoters of the various schemes—to deposit, as theretofore, at the Board of Trade, a copy of the plans, sections, &c.; also that they

(*b*) Mr. Laing states, in his evidence given before the Select Committee on Railway Bills (2nd Report), that, for the session 1845, plans and projects were deposited at the Board of Trade by the promoters of 248 distinct projects. Upwards of 700 plans were deposited previously to the session 1846; about 350 previously to the session 1863; 344 (of which 294 were new) previously to the session 1864; and about 350 previously to the session 1865.

(*c*) The committee remark, "The plan pursued by Lord Dalhousie in 1845, of subjecting each particular scheme to detailed investigation—though universal opinion testifies to the zeal, carefulness, and ability of those investigations—failed to ensure the general confirmation of its recommendations by the committees to which they were submitted."—Fifth Report, 1853, p. 14.

(*d*) By referring to the Standing Orders it will be seen that these recommendations have been attended to by the legislature. A copy of all plans, sections, and books of reference, with a map, with the line of railway delineated thereon, and a copy of the Gazette notice, must be deposited at the Board of Trade, on or before the 30th No-

vember.—Commons, S. O. (1865), 32, 33; Lords, S. O. 182, ss. 5—8; ante, 13.

A printed copy of every railway bill must also be deposited on or before the 23rd December.—Commons, S. O. 40, ante, 14. And of amended bills; *ibid*, 82; Lords, S. O. 182, s. 11. And also two days after a bill from the Commons is read a first time in the Lords, and again three days before the third reading in the Lords.—Lords, S. O. 182, s. 12.

So by a recommendation from some officer of the Board, the committee on the bill may authorize steeper ascents over roads than they could otherwise allow.—Commons, S. O. 146; Lords, S. O. 189, s. 2.

Nor can a railway cross a road on a level, unless the Board of Trade report thereon.—Commons, S. O. 147. The certificate of the Board of Trade, that one half the capital has been paid up and expended, is required in certain cases of purchase, sale, lease, or amalgamation.—Commons, S. O. 156; Lords, S. O. 189, s. 9. All reports made on railway bills by the Board are referred by the House to the Committee on the Bill.—Commons, S. O. 187; Lords, S. O. 189, s. 13.

should be required to deposit, concurrently with their plans and sections, a sketch of the proposed lines, on an Ordnance Map of England, or on a scale equal to such Ordnance Map, and also a written statement containing a description of the railway, &c.; and that the promoters should deposit, as theretofore, with the Board of Trade, a copy of the bill, as well as of such amendments as may be made during its progress.

The Lords also expressed their intention to draw the attention of Parliament, by a report, to certain subjects, as they might from time to time see fit (*e*).

But the experience of another session of Parliament did not confirm the authority of the Board; and, in 1846, another Select Committee of the House of Commons recommended the appointment of a separate tribunal, which might command the public confidence; and accordingly by 9 & 10 Vict. c. 105, the powers previously vested in the Board of Trade were, with additional powers, transferred to and vested in a separate department, called Commissioners of Railways (*f*). This separate Board continued in existence until 1851,

(*e*) Such reports have been annually presented to Parliament, by the Commissioners of Railways or the Board of Trade.

(*f*) A question, attended with important results, seems to arise on the construction of this act of Parliament, when looked at in connection with 14 & 15 Vict. c. 64, post, Appendix, which was passed for the purpose of repealing the first-mentioned act, and re-vesting the powers of the Commissioners in the Board of Trade. The case stands thus:—Under various acts, certain powers over railways had been vested in the Board of Trade. These powers were transferred by 9 & 10 Vict. c. 105, to the Commissioners of Railways. And the point to be considered is, whether that act did not, by necessary implication, repeal those portions of all former acts which had invested the Board of Trade with authority over railways. By sect. 1 of the last-mentioned act (9 & 10 Vict. c. 105), after reciting that by certain public acts enumerated, and certain private acts, certain powers with respect to railways were vested in the Board of Trade, and that it was expedient that a separate department should be constituted for those purposes, and other purposes relating to railways, her Majesty is empowered to appoint commissioners of railways; and then by sect. 2, which is the important section for our present inquiry, it is enacted, that “from and after the day which shall be specified in the ‘London Gazette’ as the day on which the said commissioners shall begin to act in execution of this act, all the powers, rights and authority now vested in or exercised by the lords of the committee of her Majesty’s Privy Council for Trade

and Foreign Plantations, by virtue of the recited acts, or by any other act of Parliament, or otherwise howsoever, with respect to any railway, or intended railway, shall be transferred to and vested in and exercised by the commissioners of railways, as fully as if they had been named in the said several acts of Parliament, instead of the lords of the said committee; and all provisions of the said acts shall be deemed to apply to the said commissioners *instead of* the lords of the said committee; and all proceedings now pending before the lords of the said committee, or carried on under their authority, shall be continued and carried on by and before the said commissioners, who shall have and exercise the same powers, rights and authority, in respect of all such proceedings, as if they had been originally commenced before the said commissioners.” Can it then be successfully contended that this section does not, by necessary implication, repeal all such parts of the acts mentioned in the preamble, as conferred powers over railways upon the Board of Trade? In other words, would the Board of Trade have had a co-ordinate jurisdiction over railway matters after the passing of 9 & 10 Vict. c. 105, and the issuing of the notice in the Gazette, just as if that act had not passed? It is submitted that they would not. If this is the true answer to the inquiry, it seems necessarily to follow that 14 & 15 Vict. c. 64, is very imperfectly framed, and that it has failed to re-vest, in the Board of Trade, the powers which were transferred to and exercised by the commissioners under the authority of 9 & 10 Vict. c. 105. It must be remembered that, by 13 & 14 Vict. c. 21, s. 5,

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when by 14 & 15 Vict. c. 105, it was also abolished, and the Board of Trade were again entrusted with the powers previously vested in the Commissioners of Railways. Whatever further changes may be made, it may perhaps be reasonably inferred, by a perusal of the very able Report made by the Select Committee of the House of Commons, in 1853, that the functions exercised by this department of the executive government will not be hereafter extended to the originating or controlling railway legislation (*g*). The committee say on this subject, "In a country so rapidly advancing in prosperity as England, and in respect of a system so new, and where so much is still matter of progress and of experience, as the system of railway communication, and where such great interests are involved, and so much ability and enterprise are constantly at work, it is futile to lay down general rules in words, unless provision be made for the steady application of those rules to the varying circumstances which from time to time arise. Hence, all the most intelligent witnesses whom your committee have examined, have pointed to some tribunal which might be invested by Parliament with so high a degree of authority as to give weight and stability to its decisions, and thus, by creating

it is enacted, that, "where any act, repealing in the whole or in part any former act, is itself repealed, such last repeal shall not revive the act or provisions before repealed, unless words be added reviving such act or provisions." Now in 14 & 15 Vict. c. 64, no such words are added. The statute, after reciting the above-mentioned act, 9 & 10 Vict. c. 105, and that it was expedient that the same should be repealed, and provision be made for the exercise and performance of the powers and duties which, since the passing of the said act, had been invested in or imposed upon the commissioners, enacts, by sect. 1, "that from and after the 10th October, 1851, *the said act shall be repealed*, and all powers, rights, authorities, and duties vested in, or exercised or performed by the commissioners of railways, *under any act passed since the passing of the said recited act,** or which may be passed during the present session of Parliament, shall be transferred to, and vested in, and performed by the lords of the committee of her Majesty's Privy Council for Trade and Foreign Plantations, as if they had been named in such acts instead of the said commissioners; and all proceedings pending before the said commissioners on the said 10th of October, or carried on under their authority, shall be continued and carried on by and before the lords of the said committee, who shall have, exercise and perform the same powers, rights, authorities and duties, in respect of all such proceedings, as might have been

exercised or performed by such commissioners in case this act had not been passed."

By sect. 2, The lords of the said committee, with the approval of the Commissioners of her Majesty's Treasury, may continue, for the transaction of the business *transferred to the lords of the said committee under this act*, all or any of the officers and servants appointed by the Commissioners of Railways, and from time to time, with such approval, remove such officers and servants, or any of them.

It will be seen that in the above Chapter "On the Jurisdiction of the Board of Trade," the author has not adopted the views of the statute which are here suggested, for the effect of giving force to them would be to show that nearly all the important acts of the Board of Trade transacted since 10th October, 1851 (including the appointment of umpires, and all other authorities exercised under the Consolidation Acts), are acts done without jurisdiction; so that the title to lands may be affected, and many other like untoward results may readily be suggested.

(*g*) Fifth Report on Railways and Canal Bills, printed 8th July, 1858, p. 14. The committee, in their Report, suggested that the Board of Trade should be authorized, by the mutual consent of the companies, to decide disputes arising between them. See Recommendation, No. 8. This recommendation appears to have been carried into effect by 22 & 23 Vict. c. 59, post, Appendix.

* If, in lieu of the words in italics, the language had been "*under any act heretofore passed*," no such question as is suggested could have arisen.

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in the public mind a more certain anticipation as to the result of parliamentary conflict, discourage idle or unprincipled speculations, and give to railway property that confidence, which is not only desirable to the holders of that property, but might be made eminently conducive to the public good. That this tribunal cannot be erected altogether without the walls of Parliament appears to your committee to be obvious, both from general considerations of the nature of representative government, and from the experience of such attempts as have been heretofore made to lighten the labours of Parliament by preliminary inquiries upon different subjects, conducted through the agency of the executive government."

The committee thereupon proceed to recommend the appointment of a permanent standing committee in the House of Commons, at the commencement of each session, to whom all railway and canal bills may be hereafter referred (*h*), and they intimated that the railway department would be in possession of much information "which would be valuable to the committee; and they should present at the commencement of the session a comprehensive report upon the general nature of the schemes for the year, together with detailed reports upon the provisions contained in the several bills, and that, for all questions which it might be found convenient to dispose of in the way of reference, the agency of the department would at all times be available whenever the committee should require it." The Standing Orders now provide for the appointment of the committee thus recommended, which is called "The General Committee on Railway and Canal Bills," and is nominated at the commencement of every session by the Committee of Selection (*i*).

We shall now consider the extent of the powers which have been entrusted to, or are now exercised by, the Board of Trade, by the statute law.

It must be observed,—1st, that this subject is discussed, without reference to any powers which may be conferred on the Board of Trade by any special railway act, such powers having reference only to the particular railway (*k*): and 2ndly, that, as a clause is now in-

(*h*) An amendment to the following effect, "that it is expedient that a member of the government, connected with the railway department, should be a member of such committee," was negatived. See Fifth Report, p. 26.

(*i*) See Commons, S. O. (1865), 4, 83, &c.; May's Parl. Pract. 659; ante, p. 21.

(*k*) Where a railway act provided that certain expenses should be borne by several companies in equitable proportions, to be determined in case of difference by the Board of Trade, it was held by the Lords

Justices that the Board were in the position of judges, and not mere arbitrators, and that a Bill to set aside their award on grounds applicable to the latter supposition could not be sustained. *Newry and Enniskillen R. Co. v. Ulster R. Co.*, 8 De G., M. & G. 481. It was also said by Lord Justice Turner, that parties bound to abide by the decision of a public board must abide by the course of practice which that board is in the habit of adopting. *Ibid.* 504.

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serted in the special acts, by which new companies, or companies applying for further powers, are made subject to the provisions of all general acts relating to railways, the following provisions are applicable to all such companies.

II. *Authority of the Board of Trade over Railway Bills promoted in Parliament.*

9 & 10 Vict. c. 105,
s. 11.

Before 9 & 10 Vict. c. 105, which established the Board of Commissioners of Railways (*l*), the interference of the Board of Trade with railway schemes promoted in Parliament arose, as we have seen (*m*), by the resolutions of Parliament, enforced by their Standing Orders, which require the promoters of railway bills to deposit plans and sections, with copies of the intended bills, and other information, at the Board of Trade. But the above mentioned statute, after enacting that the powers of the Board of Trade should be transferred to the newly constituted commissioners, enacted, by sect. 11, that it should be the duty of the commissioners to make a preliminary report on certain specified matters, and the commissioners and their officers were empowered to survey and inspect proposed railways, and, for the purposes of such survey, they were armed with the powers contained in the Ordnance Survey Act (4 & 5 Vict. c. 30). But as we have seen that 9 & 10 Vict. c. 105, was repealed by 14 & 15 Vict. c. 64, it follows that such preliminary inquiries, when made by the Board of Trade, for the purposes of these reports, are not now made under any statutory authority (*n*).

III. *Authority of the Board of Trade to grant Certificates under "The Railway Companies Powers Act, 1864."*

27 & 28 Vict.
c. 120, s. 3, App.

By "The Railway Companies Powers Act, 1864," in each of the following cases, namely,—

I. Where a railway company are desirous that authority should be given to themselves and some other railway company or companies to enter into an agreement with respect to all or any of the matters following, namely,

The maintenance and management of the railways of the companies respectively, or of any one or more of them, or of any part thereof respectively:

The use and working of the railways or railway, or of any part thereof, and the conveyance of traffic thereon:

(*l*) Ante, 431.

(*m*) Ante, 429.

(*n*) When the Admiralty may cause a

preliminary inquiry to be made, if a port or river be interfered with, see 14 & 15 Vict. c. 49, post, App.

The fixing, collecting and apportionment of the tolls, rates, charges, receipts and revenues levied, taken or arising in respect of traffic:

Authority of Board to grant Certificates under "Railway Companies Powers Act, 1864."

The joint ownership, maintenance, management and use of a station or other work, or the separate ownership, maintenance, management and use of several parts of a station or other work.

II. Where a railway company are desirous of obtaining an extension of the time limited for the sale by them of superfluous lands.

III. Where a railway company, incorporated by a special act or by certificate under "The Railways Construction Facilities Act, 1864," are desirous of obtaining authority to raise additional capital.

In any such case the company may apply to the Board of Trade Sect. 4. for a certificate under "The Railway Companies Powers Act, 1864," upon complying with the requisites of that act. But it is not Sect. 24. obligatory on the Board of Trade to grant a certificate. And any Sect. 7. railway or canal company, desirous of opposing the application, may give notice to that effect to the Board of Trade. In such case the Board cannot proceed with the application, but must lay it before Parliament, and all further proceeding must then be taken in Parliament. There is no provision, however, in the act for the case of individuals wishing to oppose the application. The provisions of the act will be found at length in the Appendix.

IV. *Authority of the Board of Trade to grant Certificates under "The Railways Construction Facilities Act, 1864."*

By "The Railways Construction Facilities Act, 1864," where all 27 & 28 Vict. c. 121, App. landowners and other parties beneficially interested are consenting to the making of a railway or the execution of a work, the promoters may apply to the Board of Trade for a certificate under that act. Such promoters, and all parties interested, may enter into provisional Sect. 3. contracts for the purchase of land, and must then publish notices of Sect. 6. their intended application, according to the general rules under the act (which the Board of Trade have power to alter (sect. 64)). They must also deposit maps, plans, sections and books of reference, and an estimate of the expense of the construction of the railway, and lodge a draft of the proposed certificate with the Board of Trade, according to the same rules. But it is not obligatory on the Board Sect. 52. of Trade to grant a certificate. And any railway or canal company desirous of opposing the application may give notice to that effect to the Board of Trade. In such case the Board cannot proceed with the application, but must lay the draft certificate before Parliament,

Authority of Board to grant Certificates under "Railways Construction Facilities Act, 1864."

and all further proceedings must then be taken in Parliament. There is no provision in the act for the case of individuals wishing to oppose the application. The provisions of the act will be found at length in the Appendix.

V. *Authority of the Board of Trade over Railways of illegal Gauge.*

9 & 10 Vict. c. 57,
App. 106.

By the act for regulating the gauge of railways it is enacted, that, with certain exceptions, four feet eight inches and a half in England, and five feet three inches in Ireland, shall be the future gauge of railways for the conveyance of passengers.

Sect. 7.

If any railway is constructed or altered contrary to that act, the company are liable to a penalty of 10*l.* per mile per day, which may be recovered under the provisions of "The Railways Clauses Act, 1845" (o). And, besides that penalty, the railway may be abated by the Board of Trade.

VI. *Authority of the Board of Trade to sanction Deviations in executing Engineering Works, and to protect Navigation.*

8 & 9 Vict. c. 20,
s. 12, App. 77.

Owners of adjoining lands may appeal to Board of Trade against deviations.

By the Railways Clauses Consolidation Act, the Board of Trade are enabled to sanction deviations in executing engineering works upon railways, in certain specified cases. That act, as we have seen (p), requires that the railway shall be kept at certain levels, as referred to the common datum line in the parliamentary section, unless the consent of the owners of adjoining property, or of two justices, can be obtained; but in all such cases of consent, the company are required to give public notice of the intended deviations, and the owners of any lands prejudicially affected thereby may apply to the Board of Trade, who are empowered to decide whether, having regard to the interests of the applicants, such proposed deviation is proper to be made, and they may, by their certificate, either disallow the making of such deviation, or authorize its being made.

Board of Trade may authorize deviations by certificate.
Sect. 14.

Sect. 14 forbids companies from deviating from or altering the gradients, curves, tunnels, or other engineering works, as described in the parliamentary section, except within certain prescribed limits; but provides, that gradients may be altered to any further extent, which shall be certified by the Board of Trade to be consistent with public safety, and not prejudicial to the public interest; and in like manner the radius of a curve may be diminished, or a tunnel substituted for an open cutting, if such alterations be authorized by a certificate from the Board (q). And sect. 66, after reciting that expense

(o) 8 & 9 Vict. c. 20, s. 140, post, App. 98.

(p) Ante, 371.

(q) See ante, 372.

might frequently be avoided, and public convenience promoted, by a reference to the Board of Trade, upon the construction of public works of an engineering nature connected with the railway, where a strict compliance with that act, or the special act, might be impossible, or attended with inconvenience to the company, and without adequate advantage to the public,—enacts, that, if any difference in regard to the construction, alteration, or restoration of any road, or bridge, or other public work of an engineering nature, should arise between the company and any trustees, &c., or other persons, either party, after giving notice to the other, may apply to the Board of Trade to decide on the proper manner of constructing, &c., such work, and the Board may then, if they think fit, decide the same accordingly (*r*), and authorize, by certificate, any arrangement or mode of construction, in regard to such work, which shall appear to them, either to be in substantial compliance with the provisions of that and the special act, or to be calculated to afford equal or greater accommodation to the public; but no such certificate can be granted, unless the Board are satisfied that existing private rights or interests will not be injuriously affected thereby (*s*).

Engineering Works.

Board of Trade may modify construction of certain roads, bridges, &c., where strict compliance with act impossible or inconvenient.

Sect. 66.

The Railways Clauses Act, 1863, also, as we have seen (*t*), gives further authority to the Board of Trade to sanction alterations in engineering works.

26 & 27 Vict.
c. 92, s. 4, App.

That act also contains various provisions giving authority to the Board of Trade to require certain things to be done for the protection of navigation.

Provisions for protection of navigation.

Thus, where a company is authorized by the special act to construct, alter or extend, any work on, in, over, through or across tidal lands or a tidal water, the company must (under a penalty of 20*l.* a night), on or near the work during the whole time of construction, &c., exhibit and keep burning, at their own expense, every night from sunset to sunrise, such lights (if any) as the Board of Trade from time to time requires or approves; and (notwithstanding the enactments for the time being in force respecting lighthouses) must also (under a similar penalty), on or near the work, when completed, always maintain, exhibit, and keep burning, at their own expense, every night from sunset to sunrise, such lights (if any), for the guidance of ships, as the Board of Trade from time to time requires or approves.

Lights on works.
Sect. 13.

And where the company is authorized or required by the special act to construct a bridge over a navigable tidal water, and the special act does not make express provision respecting the span or spans

Construction of bridges.
Sect. 14.

(*r*) Ante, 433, note (*k*).

(*s*) And see ante, 371.

(*t*) Ante, 366. See also "The Railways

Construction Facilities Act, 1864," 27 & 28
Vict. c. 121, post, App.

Engineering Works.

26 & 27 Vict.
c. 92, s. 14.

thereof, then the company shall construct the same with a span or spans of such headway and waterway, and with such opening span or spans (if any), and according to such plan, as the Board of Trade directs or approves.

User of bridges.
Sect. 15.

Where the company constructs a bridge with an opening span, the company is subject to and must abide by such regulations, with regard to the user of the bridge, as may from time to time be made by the Board of Trade, under a penalty not exceeding 20*l*.

Access to the shore under or across the railway.
Sect. 16.

And where the railway cuts off access between the land and a tidal water or tidal lands, the company must, during the construction of the railway and from time to time thereafter, make and permanently maintain, and allow to be used by all persons at all times, free of toll or other charge, all such footways and carriage-ways over, under or across the railway, or on a level therewith, as the Board of Trade directs or approves (subject to certain provisos). Where the footway or carriage-way is made across the railway on the level, then the manner of making and watching the level crossing is subject to the approval of the Board of Trade.

Prohibition of deviation of certain works without consent of Board of Trade.
Sect. 17.

Where a company is authorized by the special act to construct a railway skirting a public navigable tidal river or channel, the company must not make any deviation of the railway from the continuous centre line thereof marked on the plan deposited by them at the Board of Trade, even within the limits of deviation shown on that plan, in such manner as to diminish the navigable space, without the previous consent of the Board of Trade, or otherwise than in such manner as is expressly authorized by the Board of Trade. If any deviation is made in contravention of this section, the Board of Trade may abate and remove the work in the construction whereof the deviation is made, or any part thereof, and restore the site thereof to its former condition, at the expense of the company: and the amount of such expense shall be a debt due from the company to the crown, and be recoverable accordingly, with costs, or may be recovered, with costs, as a penalty is recoverable from the company.

Abatement of work abandoned or decayed.
Sect. 18.

If a work constructed by the company on, in, over, through or across tidal lands or a tidal water is abandoned or suffered to fall into decay, the Board of Trade may abate and remove the work, or any part of it, and restore the site thereof to its former condition, at the expense of the company: (such expenses to be recovered as is provided by sect. 17, *supra*.)

Survey of works by Board of Trade.
Sect. 19.

If at any time the Board of Trade deems it expedient, for the purposes of the special act or this part of this act, to order a survey and examination of a work constructed by the company on, in, over, through or across tidal lands or tidal water, or of the intended site of any such work, the company shall defray the expense of the survey

and examination: (such expense to be recovered as is provided by sect. 17, *supra*.)

VII. *Authority of the Board of Trade to inspect a Railway before it is opened for Public Use.*

No railway, or any portion of a railway (*u*), can be opened for the public conveyance of passengers, until one calendar month after notice of the *intention of opening* it has been given to the Board of Trade by the company (*x*), and until ten days after notice has also been given of the time when the railway will be, in the opinion of the company, *sufficiently completed for the safe conveyance of passengers, and ready for inspection* (*y*). Upon receipt of this latter notice the Board of Trade appoint an engineer officer to inspect the line in question (*z*), and give notice to that effect to the railway company. The officer so appointed is authorized at all reasonable times to enter upon and examine the railway, and the stations, works, and buildings, engines and carriages (*a*); and if any person wilfully obstructs him in the execution of his duty, a justice may fine the offender 10*l.* (*b*). If that officer reports that the opening would be attended with danger to the public, by reason of the incompleteness of the works and permanent way, or the insufficiency of the establishment for working the railway, together with the grounds of his opinion, the Board of Trade may, from time to time, order and direct the company to postpone the opening, for any period not exceeding one month at a time, until it appears that such opening may take place without danger to the public (*c*): but such order is not binding on the company, unless a copy of the report of the officer be delivered to the company with the order (*d*).

5 & 6 Vict. c. 55,
s. 4, App. 11.

First notice.

Second notice.

(*u*) Where it is proposed to open a second line of rails the company are required to forward to the Board of Trade a statement of the new works and permanent way which have been constructed in laying down this second line of rails, and to furnish drawings of all bridges and viaducts not previously sent; and as these documents will become official records of the line and works inspected, each document must be signed by the engineer, or some other responsible officer of the company, whose duty makes him acquainted with its contents. As inconvenience has frequently been experienced from the opening of new lines of railway having been postponed by the inspecting officer of the Board of Trade in consequence of the lines being incomplete in certain particulars, it is usually deemed advisable to transmit, at the same time, a statement marked B of some of those requirements in which deficiencies have occurred.

(*x*) After the receipt of the first notice

and before the second, the Board of Trade now issue the letter and circular printed, post, Appendix (after statutes).

(*y*) 5 & 6 Vict. c. 55, s. 4, post, App. 11; repealing 3 & 4 Vict. c. 97, ss. 1, 2.

(*z*) 3 & 4 Vict. c. 97, s. 5, post, App. 7; 7 & 8 Vict. c. 85, s. 15, post, App. 22.

(*a*) Ibid.

(*b*) 3 & 4 Vict. c. 97, s. 6, post, App. 8.

(*c*) Although the Board may have sanctioned the opening of one line of railway, they have authority to prohibit the use of an additional line, subsequently laid down. *Attorney-General v. Oxford and Wolverhampton R. Co.*, Weekly Rep. 1853-4, p. 330; see post, 446, note (*k*).

(*d*) 5 & 6 Vict. c. 55, s. 6, post, App. 11. The order for the postponement of the opening is usually accompanied by a letter stating "that the expense and inconvenience of repeated re-inspections and postponements of opening of railways might in many cases be saved if the company should think fit, in those cases in which there is

*Inspection of
Railway before
it is opened.*

If any company open a railway without giving the before-mentioned notices (*e*), or in contravention of any such order and direction of the Board of Trade (*e*), they are liable to a penalty of 20*l.* for every day during which the railway so continues open.

VIII. *Authority of the Board of Trade to superintend the Line of Works of a Railway after it is opened.*

Two companies
having common
terminus, or rails.
5 & 6 Vict. c. 55,
s. 11, App. 12.

Junctions.
3 & 4 Vict. c. 97,
ss. 18, 19, App. 10.

Branch lines.
5 & 6 Vict. c. 55,
s. 12, App. 12.

Several provisions are to be found in the statutes with respect to the superintendence of railways, when constructed; and, first, if the railways of two or more companies have a common terminus, or a portion of the same line of rails in common, or which form separate portions of one continued line of railway communication, and they are not able to agree upon arrangements for conducting their joint traffic with safety to the public, the Board of Trade are authorized, upon the application of either of the parties, to decide the questions in dispute, so far as the same relate to the safety of the public, and to order and determine by whom the expenses attending on the arrangements shall be borne. So, where railway companies are bound by their acts of incorporation to make, at the expense of the owner or occupier of lands adjoining a railway, openings in the ledges or flanches thereof, for effecting communications with any collateral or branch railway, and any disagreement or difference arises between the company and such owner or occupier or other persons, as to the proper places for making such communication, then the Board of Trade are empowered to hear and determine the same, in such way as they shall think fit, and their determination is binding on all parties (*f*). And, although by the act of incorporation of any company, such disagreements as those above-mentioned are therein directed to be heard by justices of the peace, their jurisdiction is taken away. A clause in a subsequent statute, (which is not, as will be seen, applicable to all railways,)—after reciting that powers of laying down branch lines opening into the ledges or flanches of main lines of railway, and of passing along such main lines, with carriages and wagons drawn by locomotive engines, or by other mechanical or animal power, and also powers to form roads or railways across exist-

no reasonable probability that the requirements of the inspecting officer would be complied with within the period of postponement, to withdraw their notice of opening and give a fresh ten days' notice when the line is ready for re-inspection," and suggesting, "that if it should appear to the directors that the requirements of the inspecting officer are not likely to be complied with before the expiration of the

period of postponement, the notice of opening given by the company should be withdrawn, and that a fresh ten days' notice be given as soon as the line is ready for re-inspection."

(*e*) 5 & 6 Vict. c. 55, s. 5, App. 11.

(*f*) See also 26 & 27 Vict. c. 92, s. 9, post, App., which authorizes the Board of Trade to appoint a referee in case of disputes about junctions.

ing railways on a level, had been given by various acts relative to railways to the owners or occupiers of lands adjoining the railway, and to other persons with their consent,—enacts, that if, in the case of any railway on which passengers (*g*) are conveyed by steam and other mechanical power, it shall appear to the Board of Trade, that such power cannot be so exercised, without seriously endangering the public safety, and that an arrangement may be made, with a due regard to existing rights of property, the Board are authorized to order and direct that such power shall only be exercised subject to such conditions as they shall direct.

Superintendence of Railway Works.
5 & 6 Vict. c. 55,
s. 12, App. 12.

And in all cases where railways cross turnpike roads, highways, private roads, and tram-ways, on the level, and the railway company are willing at their own expense to carry such road and ways over or under their railway, by means of a bridge or arch, the Board of Trade are empowered, *on the application of the company*, and after hearing the parties interested, if it shall appear that the level crossing endangers the public safety, and that the proposal of the company does not violate existing rights or interests without adequate compensation, to give the company authority to build a bridge, or make such other arrangements as the nature of the case shall require.

Level crossings.
Sect. 13.

Where the company is authorized by the special act to carry the railway across a turnpike road or public carriage road on a level, it is provided by the Railways Clauses Act, 1863, for the greater convenience and security of the public, that the company shall erect a lodge and keep a proper person to watch at the point of crossing, and shall be subject to such regulations with regard to the crossing thereof on the level, or with regard to the speed at which trains may pass the level crossing, as may from time to time be made by the Board of Trade, under heavy penalties.

26 & 27 Vict.
c. 92, s. 6, App.

Lodge at point of crossing.

The Board of Trade may also at any time, if it appears to them necessary for the public safety, *require* a bridge to be substituted for a level crossing (in which case a lodge, &c., at the point of crossing is dispensed with), and power is given to the company to take additional land for that purpose.

Board of Trade may require a bridge instead.
Sect. 7.

Sect. 8.

And, as we have seen (*h*), where a railway cuts off access between the land and a tidal water or tidal lands, the company are bound to make and maintain, free of toll to all persons at all times, such footways and carriage-ways under, over or across the railway, or on a level therewith, as the Board of Trade directs or approves.

Access to shore under or across the railway.
Sect. 16.

The control of certain gates placed upon railways is also entrusted to the Board of Trade. On this subject it is necessary to state, that,

Gates.

(*g*) No railway is to be considered a passenger railway within this clause, if two-thirds of its gross annual revenue is derived from the carriage of coals, iron, stone or

other metals or minerals. See 5 & 6 Vict. c. 55, s. 12, post, App. 12.
(*h*) *Supra*, p. 438.

*Superintendence
of Railway Works.**Gates,*5 & 6 Vict. c. 55,
s. 9, App. 11.8 & 9 Vict. c. 20,
s. 47, App. 84.*Speed.*
Sect. 48.*Screens.*
Sects. 63, 64.*Entry on ad-
joining lands.*
5 & 6 Vict. c. 55,
s. 14, App. 13.*To repair acci-
dents.*
Sect. 14.

before 5 & 6 Vict. c. 55, railway companies were, in certain cases, compelled, by their acts of incorporation, to keep gates constantly closed across their railways, for the purpose of protecting turnpike and other roads which crossed the railway on a level; but that statute directs, that, in all such cases, gates shall be kept closed across each end of the turnpike or other road, in lieu of across the railway; but it is provided, that the Board of Trade may, in any case in which they are satisfied that it would be more conducive for the public safety that the gates at any level crossing over any road should be kept closed across the railway, to order and direct that they should be kept so closed, instead of across the road. And by the Railways Clauses Consolidation Act similar powers, with regard to all gates across such roads, are given to the Board of Trade. And, by the same act, trains may not cross a turnpike road on a level, adjoining any station, at a greater speed than four miles an hour; and the company are made subject to all such rules and regulations, with regard to such crossings, as may from time to time be made by the Board of Trade. So, the Board may require the company to make a screen, or other works, on the side of roads adjoining a railway, to prevent horses from being frightened.

The Board of Trade are also armed with very extensive powers, which enable them, in certain specified cases, to authorize companies to take possession of lands adjoining to railways, which the special railway acts would not justify a trespass upon. These powers, extensive in their nature, are granted for purposes connected with the public safety; and it is provided, that the works shall be as little injurious to the lands as the nature of the case will admit of, and shall be executed with all possible despatch, and full compensation made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them.

Thus, the Board of Trade may empower any railway company, in case of an accident or slip happening, or being apprehended, to any cutting, embankment, or other work, to enter upon any lands adjoining the railway, for the purpose of repairing or preventing the accident, and to do such works as may be necessary for the purpose; and, in cases of necessity, the company may enter and execute such works, without the previous sanction of the Board, the company taking care, within forty-eight hours after such an entry, to report the nature of the accident or apprehended accident, and the works necessary to be done, to the Board of Trade. But these powers cease, if the Board, after considering the report, certify that they are not necessary for the public safety; and it is further provided, that no land shall be taken permanently for such works, without a certificate from the Board of Trade.

So, in cases where the compulsory powers given by any railway act to a company, of purchasing and taking lands, have expired, then, if the Board of Trade shall certify that the public safety requires additional land to be taken by the company, "for the purpose of giving increased width to the embankments, and inclination to the slopes of railways, or for making approaches to bridges or archways, or for doing such works for the repair or prevention of accidents as are hereinbefore described," the compulsory powers of purchasing and taking land, which may be contained in the act of the company, revive, so far as regards the portions of land mentioned in the certificate (g).

*Superintendence
of Railway Works.*
Additional lands.
Sect. 15.

IX. *Authority of the Board of Trade to sanction Bye-laws.*

The jurisdiction of the Board of Trade over bye-laws depends chiefly upon certain enactments contained in 3 & 4 Vict. c. 97, which recites, that many companies were, or might thereafter be, authorized to make bye-laws, orders, rules or regulations, and to impose penalties upon persons other than the servants of the companies; and then enacts, that copies of all such bye-laws, &c., made before the passing of the act [10th August, 1840], certified as may from time to time be directed by the Board of Trade, shall, within two months after the passing of the act, be laid before them; and that every such bye-law, &c., not so laid before them, shall cease to have any force or effect.

3 & 4 Vict. c. 97.
Sect. 7, App. 8.

And, as to future bye-laws, it is further enacted, that no bye-law, &c., which should not be in force at the time of the passing of the act, and no order, rule or regulation annulling any existing bye-law, &c., which should be made after the passing thereof, shall have any force, until two months after a copy of such bye-law, &c., certified in like manner, shall have been laid before the Board, unless the Board shall before such period signify their approbation thereof.

Sect. 8.

By the Railways Clauses Act, 1863, bye-laws relating to passengers, animals and goods conveyed in steam vessels belonging to railway companies must also be sanctioned by the Board of Trade.

26 & 27 Vict.
c. 93, s. 32.

The Board are also authorized, at any time either before or after any bye-law, &c., laid before them shall have come into operation, to notify to the company their disallowance thereof, and, in certain cases, the time at which it shall cease to be in force; and no bye-law, &c., so disallowed has any force. The statute also repeals every enactment contained in any act of Parliament theretofore passed, which requires

To disallow bye-laws.
3 & 4 Vict. c. 97,
s. 9, App. 8.

Sect. 10.

(g) The company are required to give notice, to the parties interested in the lands, of their intention to apply for a certificate, and such parties are entitled to be heard before the Board of Trade. It is also pro-

vided that, if the certificate shall, on such hearing, be refused, the party resisting the certificate may recover costs, if the Board of Trade shall require the company to pay them.

To sanction Bye-Laws.

the approval or concurrence of any justice of the peace, court of quarter sessions, or other persons, other than members of the said companies, to give validity to their bye-laws.

Bye-laws as to servants.

It may be collected from the foregoing enactments (although they are not very clearly expressed), that the power to make bye-laws, upon persons other than officers and servants, is still preserved to railway companies, as it existed before the statute, subject, nevertheless, to the control of the Board of Trade. But it seems that the Board of Trade have no jurisdiction over bye-laws made for regulating the conduct of the servants of the company. And the Consolidation Acts do not appear to have altered the law in this respect, because the powers conferred on railway companies, by 8 & 9 Vict. c. 20, s. 109 (post, App. 94), to make bye-laws for regulating the use of the railway, are given subject to the provisions of 3 & 4 Vict. c. 97: whereas 8 & 9 Vict. c. 16, s. 124 (post, App. 39), which empowers them to make bye-laws for the regulation of officers and servants, and for providing for the due management of the affairs of the company, contains no reference to 3 & 4 Vict. c. 97.

Bye-laws for regulating travelling.

The Board of Trade have framed the following bye-laws for regulating travelling upon railways, which have been usually adopted.

1. No passenger will be allowed to enter any carriage used on the railway, or to travel therein upon the railway, without having first paid his fare and obtained a ticket. Each passenger, on payment of his fare, will be furnished with a ticket specifying the class of carriage and the distance for which the fare has been paid; which ticket such passenger is to show when required by the guard in charge of the train, and to deliver up before leaving the company's premises, upon demand, to the guard or other servant of the company, duly authorized to collect tickets. Any passenger not producing or delivering up his ticket as aforesaid will be required to pay the fare from the place whence the train originally started, and in default of payment thereof shall forfeit and pay a sum not exceeding 40s.

2. At the intermediate stations the fares will only be accepted, and the tickets furnished, conditionally; that is to say, in case there shall be room in the train for which the tickets are furnished; in case there shall not be room for all the passengers to whom tickets have been furnished, those to whom tickets have been furnished for the longest distance shall have the preference; and those to whom tickets have been furnished for the same distance shall have priority according to the order in which the tickets have been furnished, as denoted by the consecutive numbers stamped upon them.

3. Any person travelling without permission in a carriage of a superior class to that for which he has obtained a ticket is hereby subjected to a penalty not exceeding 40s.

4. Smoking tobacco is strictly prohibited, both in the carriages, and in the company's stations. Every person smoking tobacco in a carriage or station is hereby subjected to a penalty not exceeding 40s.; and every person persisting in smoking tobacco in a carriage or station, after being warned to desist by the guard in charge of the train, or any officer of the company, shall, in addition to incurring a penalty not exceeding 40s., be immediately, or, if travelling, at the first opportunity, removed from the company's premises.

5. Any person found in a carriage or station in a state of intoxication, or committing any nuisance, or otherwise wilfully interfering with the comfort of other passengers, is hereby subjected to a penalty not exceeding 40s., and shall immediately, or, if travelling, at the first opportunity, be removed from the company's premises.

To sanction Bye-Laws.

Bye-laws for regulating travelling.

6. Any passenger cutting the linings, removing or defacing the number-plates, breaking the windows, or otherwise wilfully damaging or injuring any carriage used on the railway, shall forfeit and pay a sum not exceeding 5*l.*, in addition to the amount of any damage for which he may be liable.

7. No passenger shall be permitted to ride on the roof, steps or platform of any carriage; and any person persisting in doing so, after being warned to desist by the guard in charge of the train, or any officer of the company, is hereby subjected to a penalty not exceeding 40s.

8. Any passenger entering or leaving, or attempting to enter or leave, any of the carriages while the train is in motion, is hereby subjected to a penalty not exceeding 40s.

9. Dogs will not be suffered to accompany passengers in the carriages, but will be conveyed separately and charged for.

NOTICES.

I. Under the provisions of the acts relating to this railway, any person who shall travel or attempt to travel in any carriage used on the railway, without having previously paid his fare, and with intent to avoid payment thereof, or who, having paid his fare for a certain distance, shall knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or who shall knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, is for every such offence liable to a penalty of 40s.; and any person committing such offence may be lawfully apprehended and detained by the company's officers and servants, until he can be conveniently taken before some justice.

II. Persons wilfully obstructing or impeding the company's officers in the execution of their duty, are liable under 3 & 4 Vict. c. 97, s. 16, to be apprehended and fined 5*l.*, with two months' imprisonment in default of payment.

III. No fee or gratuity is permitted to be taken by any guard, porter, or other servant of the company, under pain of immediate dismissal.

X. *Authority of the Board of Trade to originate Prosecutions, and other Legal Proceedings.*

The Board of Trade were originally authorized (*h*) to take certain steps to compel railway companies to comply with the provisions contained in their respective acts of Parliament; but a more extensive measure being declared to be expedient, that enactment was repealed, and the following authorities substituted, by 7 & 8 Vict. c. 85.

Whenever it appears to the Board of Trade that any of the provisions of the acts of Parliament for regulating any railway, or the

If railway companies contravene statutes, Board

(*h*) By 3 & 4 Vict. c. 97, s. 11, post, App. 8.

Authority to originate Legal Proceedings.

of Trade to certify the same to the Attorney-General, who shall proceed against them.

7 & 8 Vict. c. 85, s. 17, App. 22.

Notice to company.

Sect. 18.

Limitation.

provisions of that act, or of any general act relating to railways, have not been complied with by any railway company, or any of its officers, or that any railway company has acted or is acting in a manner unauthorized by the provisions of the acts of Parliament relating to such railway, or in excess of the powers given and objects defined in such acts, and it also appears to the Board that it would be for the public advantage that the company shall be restrained from so acting, the Board shall certify the same to the Attorney-General for England or Ireland, or to the Lord-Advocate for Scotland; and thereupon the Attorney-General or Lord-Advocate *shall* (i), in case such default shall consist of non-compliance with the provisions of any of the acts of Parliament before mentioned, proceed by information (k), or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, to recover penalties or forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ; and in case the default shall consist in the commission of some act unauthorized by law, then the proceeding shall be by suit in equity, or such other proceeding as the nature of the case may require, to obtain an injunction or order (which the judge in equity or other judge is authorized and required to grant, if he shall be of opinion that the acts of the company are not authorized by law) to restrain the company from acting in such illegal manner, or to give such other relief as the nature of the case may require. But it is provided, first, that no certificate shall be given until twenty-one days after the Board has given notice to the company of their intention to give such certificate; secondly, that no legal proceedings shall be commenced, under the above-mentioned authority, for any offence except upon any such certificate as aforesaid, and within one year after such offence has been committed (l).

(i) The Attorney-General, &c., is bound to act on receiving a certificate from the Board of Trade. *Attorney-General v. Great Northern R. Co.*, 29 L. J. (Ch.) 794.

(k) Upon an information filed by the Attorney-General to restrain a company from opening a railway in contravention of an order issued by the Board of Trade, an injunction was granted by Sir J. Romilly, M.R., but he refused to inquire into the grounds upon which the Board of Trade had interfered, as a mandamus would lie

on the application of the company if they had acted upon insufficient grounds. *Attorney-General v. Oxford and Wolverhampton R. Co.*, Weekly Rep. 1853-4, p. 330; ante, 439.

(l) By the Railway and Canal Traffic Act, 1854, 17 & 18 Vict. c. 31, s. 3, post, 456, the Board may certify to the Attorney-General, with a view to institute proceedings, if a company contravene that statute.

XI. *Authority of the Board of Trade to require certain Returns to be made.*

Authority to require certain Returns.

The Board of Trade may direct every railway company to deliver returns (*m*) (according to the form provided by the Board) of the aggregate traffic in passengers, according to the several classes, and of the aggregate traffic in cattle and goods respectively, on the railway; also of all accidents which shall have occurred thereon, attended with personal injury; and also a table of all tolls, rates and charges, from time to time levied on each class of passengers, and on cattle and goods conveyed by the railway (*n*); and it is provided that such returns shall be required, in like manner and at the same time, from all the said companies, unless the Board shall specially exempt any of them, and enter the grounds of the exemption in the minutes of their proceedings; and every officer of any company, who wilfully makes any false return, is deemed guilty of a misdemeanor. A subsequent statute, without repealing the above-mentioned enactments as to the returns required to be made in cases of accident, further provides, that every railway company shall, within forty-eight hours after the occurrence upon their railway of any accident attended with serious personal injury to the public using the same, give notice thereof to the Board of Trade. The Board of Trade are also empowered to order and direct any railway company to make up and deliver to them returns of serious accidents occurring in the course of the public traffic upon the railway, whether attended with personal injury or not, in such form and manner as the Board of Trade shall deem necessary and require for their information, with a view to the public safety (*o*); but it is provided that all such returns shall be privileged communications, and shall not be evidence in any court whatsoever.

3 & 4 Vict. c. 97, s. 3, App. 7.

Sect. 4.

5 & 6 Vict. c. 55, s. 7, App. 11.

Sect. 8.

XII. *Authority of the Board of Trade to regulate Third-Class Trains.*

Certain railway companies are required to convey passengers by third-class trains, on payment of specified fares; and certain conditions, having relation to the rate of speed, the number of stoppages, and other particulars, are imposed by the statute (*p*). The Board of Trade have, however, a controlling power over these conditions:—First, the hour at which such trains start is subject to their approval;

(*m*) The returns made under this and the following enactments are stated in the yearly reports made by the Board of Trade.

(*n*) If such returns are not delivered within thirty days after they are required, the company are liable to pay to her Majesty 20*l.* for every day during which they

wilfully neglect to deliver the same. 3 & 4 Vict. c. 97, s. 3, post, App. 7.

(*o*) If these returns are not delivered within fourteen days after they have been required, a forfeiture of 5*l.* per day is incurred.

(*p*) See on this subject, post, 473.

Authority to appoint Arbitrators and Umpires.

7 & 8 Vict. c. 85,
s. 6, App. 19.
Sect. 8.

and, secondly, the carriages must be provided with seats, and be protected from the weather in a manner satisfactory to the Board (*p*). Moreover the Board have a discretionary power, upon the application of any railway company, to dispense with any of the required conditions, (except as to the amount of fare,) upon such terms as shall appear more beneficial and convenient for the passengers. Until the hours of arrival and departure are approved by the Board of Trade, the company cannot get any remission of duty in respect of cheap trains. When approved, a list is transmitted to the Board of Inland Revenue.

XIII. *Authority of the Board of Trade to regulate the Speed of Mail Trains.*

The obligations imposed on railway companies to transmit her Majesty's mails, are treated of elsewhere (*q*). An early statute required them to convey the mails by trains propelled at the maximum speed of their first-class trains (*r*), but, by a subsequent statute, the Postmaster-General is authorized to require that the mails shall be forwarded, by certain railways, at any rate of speed which the Inspector-General of Railways shall certify to be safe, not exceeding twenty-seven miles in the hour, including stoppages (*s*).

XIV. *Authority of the Board of Trade to appoint Arbitrators and Umpires.*

By "The Railway Companies Arbitration Act, 1859" (*t*), the Board of Trade may in certain cases appoint arbitrators and umpires.

(*p*) The Board of Trade require certain forms to be filled up in triplicate, relative to all cheap trains proposed to be run.

They also require to be furnished with a drawing of the carriages intended to be used for the conveyance of passengers by these trains, consisting of the three following figures, drawn to a scale of not less than four feet to an inch; viz.—

1stly. An outside elevation, showing the position of the windows, ventilators and lamps.

2ndly. A transverse section.

3rdly. An inside plan, showing the arrangements of the several seats, with reference by letters, specifying the width and length of each seat, and the number of passengers to be accommodated on each; also a memorandum of the size of the windows and ventilators, stating whether they are fixed or constructed to open and close, and the position of the lamps for lighting the carriages at night.

It is to be observed that the dimension of each carriage should be such as to allow

twenty cubic feet of space at least to each passenger.

The area of the glass windows should afford to each passenger sixty superficial inches.

The seats must be provided with backs, and must be at least fifteen inches broad, and they must afford an average width of at least sixteen inches for each passenger.

Each carriage should be provided with two lamps at least to be lighted at night.

Should any alteration be at any time made in the hours of arrival or departure of the company's cheap trains, it is necessary that time tables, showing the intended changes, be previously submitted to the Board of Trade for their approval, in order to enable the company to obtain a remission of the duty.

(*q*) See on this subject, post, 468.

(*r*) 1 & 2 Vict. c. 98, s. 1, post, App. 2.

(*s*) 7 & 8 Vict. c. 85, s. 11, post, App. 26.

(*t*) 22 & 23 Vict. c. 59, ss. 8, 10, 13, 15, post, App.

The Board of Trade are also authorized to appoint an umpire to determine certain matters referred to arbitration, under the provisions of the Consolidation Acts (*u*). This power applies to all cases where a railway company is one of the parties interested in the application; and the Board may be called upon to exercise their powers, if the arbitrators refuse or neglect for seven days to appoint an umpire. See the Companies Clauses Consolidation Act, 8 & 9 Vict. c. 16, s. 131, post, App. 40; the Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, s. 28, post, App. 50 (*x*); the Railways Clauses Consolidation Act, 8 & 9 Vict. c. 20, s. 129, post, App. 97.

Authority to extend Time.

Many of the Railway Acts passed in 1864 (*y*), relating to railways in the neighbourhood of London, require the companies to provide cheap trains for the labouring classes, and limit the liability of the companies in respect of accidents happening to passengers by such trains to 100l.; the amount of compensation payable in respect of any passenger so injured to be determined by an arbitrator to be appointed by the Board of Trade, and not otherwise.

Power to appoint arbitrators to determine compensation to labouring classes.

By the Companies Act, 1862, the Board of Trade may, in the case of companies, other than banking companies, that have a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares, and in the case of companies not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of registered members, appoint one or more inspectors to examine into the affairs of any company under that act, and to report thereon. But this power is not applicable to railway companies which have obtained acts of incorporation.

25 & 26 Vict. c. 89, s. 56, App.

XV. *Authority of the Board of Trade to extend the Period allowed for the Completion of a Railway, or for the compulsory taking of Lands, and to authorize the making of certain Contracts.*

Certain powers were given to the Commissioners of Railways by 11 & 12 Vict. c. 3, to extend the period allowed by any Railway Act, either for the completion of the railway or works, or for the compulsory purchase of lands for that purpose, for such further time as the commissioners might think fit, not exceeding two years from the

(*u*) Where a railway act provided that certain expenses should be borne by several companies in proportions to be settled by the Board of Trade, it was held that the Court of Chancery could not control the discretion of the Board, as they were not in the position of private arbitrators. *Newry and Enniskillen R. Co. v. Ulster R. Co.*, 8

De Gex, M. & G. 487.

(*x*) See the cases as to the appointment of an umpire under this act, ante, 283, and following pages; also 14 & 15 Vict. c. 64, s. 3, post, App.

(*y*) See these acts referred to, post, 474, note (*c*).

Authority to authorize Abandonment of Railways.

expiration of the period allowed by the particular Railway Act; but as this act required that the application should be made to the commissioners within two calendar months after the passing thereof, (*i. e.* 20th December, 1847,) it does not seem necessary to do more than refer generally to this statute. By the same act, railway companies who had not before 27th of November, 1847, executed or entered into a contract for the execution of any part of their works, could not enter into such contracts, unless in certain cases they were authorized to do so by an order of the Commissioners of Railways(*a*). Where the works were proceeded with by the authority of the shareholders, a certificate was required to be deposited in the office of the Commissioners of Railways(*b*).

XVI. *Authority of the Board of Trade to authorize the Abandonment of Railways.*

13 & 14 Vict. c. 83,
s. 1, App.

By the Abandonment of Railways Act, 1850, after reciting that companies had been incorporated by act of Parliament for making railways, and it had been found that such railways, or certain parts thereof, could not be made or carried on with advantage either to the promoters or to the public, and it was expedient that facilities should be given for the abandonment of such railways, it is enacted, that if any company authorized by act of Parliament theretofore passed (*c*) to make a railway, desire that the making and carrying on of such railway, whether commenced or not, be abandoned, such company may, with the consent of the holders of three-fifths of the shares of the company, make application to the Commissioners of Railways(*d*), setting forth the particulars of the railway or portion of the railway desired to be abandoned, and the grounds of such application. After providing for the mode of calling a meeting of the shareholders to obtain their consent to the abandonment, and of calling a second meeting, if the commissioners shall think it necessary, the act provides, that if it appear to the commissioners that there are sufficient grounds for entertaining such application, the commissioners shall require the company to give notice of such application by advertisement, setting forth therein how any person, who thinks himself aggrieved by the proposed abandonment, may bring such objection before the commissioners.

Sects. 2—12.

Sect. 13.

Sect. 14.

(*a*) 11 & 12 Vict. c. 3, s. 8.

(*b*) *Ibid.* s. 10.

(*c*) This act does not therefore apply to

railways authorized by subsequent acts of parliament.

(*d*) Board of Trade now, ante, 432.

also may send an officer to inspect the railway or work proposed to be abandoned.

Authority to authorize Abandonment of Railways.

Upon proof that such notice had been duly given, the commissioners may, by warrant, authorize the abandonment of the railway or portion of railway.

13 & 14 Vict. c. 83, s. 15.

Provided that in considering the objections to the proposed abandonment of a part only of the railway, the commissioners shall have regard to the local situation of the lands of the shareholders objecting, and may in certain cases reduce or cancel the shares of the shareholders so objecting.

Sect. 16.

Within one month after any warrant is granted, the company shall give notice, requiring all persons having any claims upon the company for compensation or otherwise to transmit the statement of such claims.

Sect. 17.

Upon proof that notice of such warrant has been duly published, the commissioners shall certify the same accordingly; and such certificate shall be evidence.

Sect. 18.

After the granting of such warrant the company shall (subject to the provisions thereafter contained) be released from all liability to make or work the railway, &c., or to purchase any of the lands, or to complete the purchase of any such lands, or to complete any contract which by reason of such abandonment cannot be performed.

Sect. 19.

But it is provided that the company shall not be released from certain specified contracts; and compensation must also be paid to certain parties, as in the act is directed.

Sects. 20—27.

The commissioners may also in certain cases authorize the company to remove bridges or tunnels, carried, for the purposes of the intended railway, across or under public or private roads, and thereby relieve the company from their liability to pay money for the purpose of keeping such bridges or tunnels in repair.

Sect. 22.

The act then provides that after the granting of any such warrant, the affairs of the company may be wound up in the manner therein directed (e). And lastly, the commissioners are required to lay before both Houses of Parliament a copy of every warrant, accompanied by a report.

Sect. 29.

Sect. 37.

XVII. *Authority of the Board of Trade to sanction Working Agreements between Companies.*

By the Railways Clauses Act, 1863, where two or more companies are authorized by a special act incorporating Part III. of that

26 & 27 Vict. c. 92, Part III., s. 22, App.

(e) The commissioners take no part in these proceedings, see post, *tit.* "Dissolution of Companies."

Authority to sanction. Working Agreements.

26 & 27 Vict. c. 92.

act to agree (g) among themselves with respect to all or any of the following purposes ; namely :—

The maintenance and management of the railways of the companies respectively, or any one or more of them, or any part thereof respectively, and of the works connected therewith respectively, or any of them ;

The use and working of the railways or railway, or any part thereof, and the conveyance of traffic thereon ;

The fixing, collecting and apportionment of the tolls, rates, charges, receipts and revenues levied, taken or arising in respect of traffic.

Sect. 25.

The agreement shall not have any operation until it is approved by the Board of Trade, and the Board of Trade shall not approve the agreement without being satisfied of its having received the sanction of the shareholders in manner in the act particularly specified.

Sect. 27.

At the expiration of the first or any subsequent period of ten years after the making of the agreement, the Board of Trade may, if they are of opinion that the interests of the public are prejudicially affected thereby, cause the same to be revised ; and the Board of Trade may require the companies, parties thereto, to publish such notices of any intended revision of the agreement as the Board may direct, and may modify the agreement in such manner as may seem expedient for the protection of the interests of the public, and may declare the modification to be part of the agreement, and the same shall be read and take effect accordingly.

XVIII. *Authority of the Board of Trade over Steam Vessels belonging to or used by Railway Companies.*

26 & 27 Vict. c. 92,
Part IV., s. 30,
App.

By the Railways Clauses Act, 1863 (which, as we have seen (h), requires all bye-laws relating to steam vessels belonging to or used by railway companies to be sanctioned by the Board of Trade), where a railway company, incorporated either before or after the passing of that act, is authorized by a special act thereafter passed, and incorporating Part IV. of that act, to build, or buy, or hire, and to use, maintain and work, or to enter into arrangements for using, &c., steam vessels, for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels ; then, in every seventh year after the passing of the special act, reckoned from the 1st day of January next after its passing, the Board of Trade, if they are of opinion that the interests of the public are prejudicially affected by the exercise of the powers of the com-

Provision for cesser of powers as to steam vessels, on report from Board of Trade.

Sect. 35.

(g) And by sect. 29, any alteration of an agreement is to be deemed an agreement.

(h) Ante, 443.

pany relative to steam vessels, may give to the company notice in writing thereof, and of the reasons on which that opinion is founded. And if the company does not before the beginning of the then next Session of Parliament make provision to the satisfaction of the Board of Trade, for the protection of the interests of the public, or if the injury done to the interests of the public is in the opinion of the Board of Trade incapable of being remedied by the company, then the Board of Trade, at the beginning of the Session of Parliament then next following, shall report to both Houses of Parliament such their opinion, and the reasons on which that opinion is founded; and at the expiration of twelve calendar months after the presentation to the Houses of Parliament of that report, the powers of the company relative to steam vessels, or such of them as are specified in the report, shall, unless Parliament in the meantime otherwise provides, cease to be exercised.

*Authority over
Steam Vessels.*

XIX. *Notices, &c., how to be served and signed.*

The statutes contain provisions which direct the mode in which all documents issuing from the Board of Trade are to be signed; and, also, what shall be deemed a sufficient service of them upon railway companies (i). And the Railways Clauses Consolidation Act also enacts upon this subject, "that all regulations, certificates, notices and other documents in writing, purporting to be made or issued by or by the authority of the Board of Trade, and signed by some officer appointed for that purpose by the Board of Trade, shall, for the purposes of this and the special act, and any act incorporated therewith, be deemed to have been so made and issued, and that without proof of the authority of the person signing the same, or of the signature thereto, which matters shall be presumed until the contrary be proved; and service of any such document, by leaving the same at one of the principal offices of the railway company, or by sending the same, by post, addressed to the secretary at such office, shall be deemed good service upon the company; and all notices and other documents, required by this or the special act to be given to or laid before the Board of Trade, shall be delivered at, or sent by post addressed to, the office of the Board of Trade in London.

*Form and Service
of Notices.*

8 & 9 Vict. c. 20,
s. 67, App. 88.

And by 14 & 15 Vict. c. 64, where by any act relating to railways or to any railway, the Commissioners of Railways, or the Lords of the Committee of the Board of Trade, are empowered or required to make or issue any appointment, authority, determination, order, requisition, regulation, certificate or notice, or to do any other act,

14 & 15 Vict. c. 64,
s. 3, App.

(i) See 3 & 4 Vict. c. 97, s. 20, post, App. 14; and 7 & 8 Vict. c. 85, s. 23, post, App. 10; 5 & 6 Vict. c. 55, s. 19, post, App. 23.

*Form and Service
of Notices.*

the Lords of the said Committee may, after the 10th of October, 1851, signify such appointment, authority, determination, order, requisition, regulation, certificate, notice or other act by a written or printed document, signed by one of the joint secretaries of the Lords of the Committee, or by some assistant-secretary, or other officer appointed by them to sign documents relating to railways; and every such appointment, &c., signified by a written or printed document, purporting to be so signed as aforesaid, shall be deemed to have been duly made, issued or done by the Lords of the Committee; and every such document shall be received in evidence in all courts, and before all justices and others, without proof of the authority or signature of such secretary or other officer, or other proof whatsoever, until it be shown that such document was not signed by the authority of the Lords of the Committee (*k*).

17 & 18 Vict. c. 31,
s. 3, post, p. 456.

Lastly, we may remark that, by the Railway and Canal Traffic Act, 1854, if the Board of Trade issue a certificate to the Attorney-General in England and Ireland, or to the Lord Advocate in Scotland, alleging that the provisions contained in that act have been violated or contravened by any railway company, then these public officers are empowered to apply to certain of the superior courts, by motion or summons, for their interference, so that the company may be restrained from continuing such violation or contravention. The provisions of this act are discussed in the following chapter.

(*k*) See *Wilts, Somerset and Weymouth R. Co. v. Fooks*, 3 Exch. 728; ante, 286, note (*d*).

CHAPTER X.

OBLIGATIONS AND RESTRICTIONS IMPOSED BY THE STATUTE LAW ON
RAILWAY COMPANIES.

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I. *Traffic Regulations contained in 17 & 18 Vict. c. 31, and other statutory Provisions relating to Traffic.*

THE Railway and Canal Traffic Act, 1854 (a), after reciting that it is expedient to make better provision for regulating the traffic on railways and canals, enacts by sect. 2 as follows:—

“Every railway company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic (b) upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats and other vehicles, and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever; nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal, or

17 & 18 Vict. c. 31, App.

Duty of railway companies to make arrangements for receiving and forwarding traffic without unreasonable delay, and without partiality.

(a) Which was extended to steam vessels belonging to railway companies by 26 & 27 Vict. c. 92, s. 31, post, App.

(b) By sect. 1, the word “traffic” shall include not only passengers, and their luggage, and goods, animals, and other things

conveyed by any railway company or canal company, or railway and canal company, but also carriages, waggons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company.

*Railway and
Canal Traffic Act,
1854.*

17 & 18 Vict. c. 31,
s. 2, App.

Parties com-
plaining may
apply, by motion
or summons, to
the Court of Com-
mon Pleas.

railway and canal communication, or which have the terminus, station or wharf of the one near (*c*) the terminus, station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf."

By sect. 3, "It shall be lawful for any company or person complaining against any such companies or company of anything done, or of any omission made in violation or contravention of this act, to apply in a summary way, by motion or summons in England, to her Majesty's Court of Common Pleas at Westminster, or in Ireland to any of her Majesty's Superior Courts in Dublin, or in Scotland to the Court of Session in Scotland, as the case may be, or to any judge of any such court; and upon the certificate to her Majesty's Attorney-General in England or Ireland, or her Majesty's Lord Advocate in Scotland, of the Board of Trade, alleging any such violation or contravention of this act by any such companies or company, it shall also be lawful for the said Attorney-General or Lord Advocate to apply in like manner to any such court or judge, and in either of such cases it shall be lawful for such court or judge to hear and determine the matter of such complaint; and for that purpose, if such court or judge shall think fit, to direct and prosecute, in such mode and by such engineers, barristers, or other persons as they shall think proper, all such inquiries as may be deemed necessary to enable such court or judge to form a just judgment on the matter of such complaint; and if it be made to appear to such court or judge on such hearing, or on the report of any such person, that anything has been done or omission made in violation or contravention of this act by such company or companies, it shall be lawful for such court or judge to issue a writ of injunction or interdict, restraining such company or companies from further continuing such violation or contravention of this act, and enjoining obedience to the same, and in case of disobedience of any such writ of injunction or interdict, it shall be lawful for such court or judge to order that a writ or writs of attachment, or any other process of such court incident or applicable to writs of injunction or interdict (*d*), shall issue against any one or more of the directors of any company, or against any owner, lessee, contractor or other person failing to obey such writ of injunction or interdict; and such court or judge may also, if they or he shall think fit, make an order directing the payment by one or more of such companies of such sum of money as such court or judge shall determine, not exceeding for each company the sum of two hundred pounds for every day, after a day to be named in the order, that such company or companies shall fail to obey such injunction or interdict, and such monies shall be payable as the court or judge may direct, either to the party complaining or into court to abide the ultimate decision of the court, or to her Majesty, and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a decree or judgment in any superior court at Westminster or Dublin, in England or Ireland, and in Scotland by such diligence as is competent

(*c*) By sect. 1, a station, terminus, or wharf, shall be deemed to be *near* another station, terminus, or wharf, when the distance between such stations, termini, or wharves, shall not exceed one mile, such

stations not being situate within five miles from St. Paul's Church, in London; and see other words used in the act defined in sect. 1, post, App.

(*d*) See the Chapter on Injunctions, post,

on an extracted decree of the Court of Session; and in any such proceeding as aforesaid, such court or judge may order and determine that all or any costs thereof or thereon incurred shall and may be paid by or to the one party or the other, as such court or judge shall think fit; and it shall be lawful for any such engineer, barrister or other person, if directed so to do by such court or judge, to receive evidence on oath relating to the matter of any such inquiry, and to administer such oath."

Railway and Canal Traffic Act, 1854.

17 & 18 Vict. c. 31, s. 3.

Costs.

The act then proceeds to authorize the judges to make general rules and orders as to the forms of proceedings and process, and all other things touching the practice and otherwise in carrying the act into execution, as they may think fit (e); and it is provided, that

Power to make rules.

Sect. 4.

Rehearing.

(e) The following Rules have been issued by the Court of Common Pleas (15 C. B. 472).

1. Every application made under this act to the court shall be for a rule calling upon the company or companies complained of, to show cause why a writ of injunction should not issue against such company or companies, enjoining them to do, or to desist from doing, the thing required to be done, or the thing, the doing of which is complained of by the company or person making such application; and every application made under this act to a judge at chambers shall be by summons calling upon the company or companies complained of to show cause in like manner, which summons shall be granted only upon affidavit, and upon a statement made to the judge in like manner as upon an application to the court for a rule to show cause.

2. If on the hearing of any such rule or summons, the court or judge shall think fit to direct and prosecute inquiries into the matter thereof, under the 3rd section of this act, the order for that purpose shall be in the following terms, or to the like effect; the rule or summons being enlarged until such further day as the court or judge shall think fit, in order that in the meantime such inquiries may be made and reported on:—
"IN THE COMMON PLEAS.

"In the matter of the complaint of A. B. [or 'of the — company'] against the — company.

"It is ordered, that C. D., Esq., engineer [or as the case may be] do forthwith make such inquiries into the matter of this complaint as may be necessary to enable the court [or 'the Honorable Mr. Justice —'] to determine the same, and do report thereon to the court [or 'to the said Mr. Justice —'] on or before the — day of — next.

"Dated this — day of —, 186-."

3. Office copies of all the affidavits filed by either party on the hearing of such rule or summons shall, at the expense of such party, be furnished to the person appointed to make such inquiries, within three days after the making of such order as aforesaid.

4. The parties shall be entitled to be again heard by the court or judge upon the

said report, but no fresh affidavits shall be allowed on such hearing, unless by leave of the court or a judge.

5. Every writ of injunction issued under this act shall be in the following form, or to the like effect:—

"Victoria, &c. To the — company, their agents and servants, and every of them, greeting: Whereas A. B. [or 'the — company'] hath lately complained before us, in our Court of Common Pleas at Westminster, of a violation and contravention by you, the said company, of 'The Railway and Canal Traffic Act, 1854;' that is to say, in [state the act or omission complained of:] And whereas, upon the hearing of such complaint, the same hath been found to be true: We do therefore strictly enjoin and command you, the said — company, and your agents and servants, and every one of you, that you and every one of you do from henceforth altogether absolutely desist from [state the matter for the injunction where an act done is complained of] or ['that you and every one of you forthwith do'] [state the matter for the injunction where an omission is complained of] until our said court shall make order to the contrary.

"Witness, Sir Wm. Erle at Westminster, the — day of — in the year of our Lord —."

6. If the court or judge shall think fit also to make an order, directing the payment of a sum of money by the company or companies complained of, such order shall be in the following form, or to the like effect:—

"IN THE COMMON PLEAS.

"In the matter of the complaint of — against the — company.

"It is ordered, that the said — company do pay to the said — [or 'into court, to abide the ultimate decision of the court in the matter of the said complaint,' or 'to the use of her Majesty'] the sum of £— for every day after the — day of — instant that the said company shall fail to obey a certain writ of injunction dated this day, and issued against the said company at the instance of the said —.

"Dated this — day of —, 186-."

7. If such money be ordered to be paid

*Railway and
Canal Traffic Act,
1854.*

17 & 18 Vict. s. 31,
s. 5.

Mode of proceed-
ing.

Sect. 6.

Public inconve-
nience must be
shown.

*Barret v. Great
Northern R. Co.*

Interests of rail-
way to be con-
sidered.

*Ransome v.
Eastern Counties
R. Co.*

upon the application of any party aggrieved by the order made upon such motion or summons as aforesaid, it shall be lawful for the court or judge by whom such order was made, to direct, if they think fit so to do, such motion or application on summons to be reheard before such court or judge, and upon such rehearing to rescind or vary such order; and it is also enacted, that no proceeding shall be taken for any violation or contravention of the above enactments, except in the manner therein provided; but nothing therein contained shall take away or diminish any rights, remedies or privileges of any person or company against any railway or canal, or railway and canal company, under the existing law (*e*).

Soon after the passing of this act, it was held by the Court of Common Pleas, that in order to induce that court to interfere under sect. 2, it is not necessary to show a case of individual grievance, but it is quite clear that a case must be made out of *public* inconvenience. Where, therefore, it appeared clearly by the affidavits made on behalf of the company, that no public complaint of want of accommodation had ever been made, and it did not appear upon the complainant's affidavits that any such complaint had ever been made, the court discharged with costs a rule which had been obtained for the purpose of compelling the company to run trains at particular times (*f*). And in another case, which happened shortly afterwards (*g*), the court held that in determining whether a railway company has given "any undue and unreasonable preference" to a particular person, company or traffic, or subjected a particular person, company or traffic, to "undue or unreasonable prejudice or disadvantage," the court may take into consideration the fair interests of the railway itself, and entertain such questions as whether the company might not carry larger quantities or for longer distances at lower rates per ton per mile, than smaller quantities or for shorter distances, so as to

into court, to abide the ultimate decision of the court, the same shall, upon the ultimate decision of the court being made, be paid out of court either to the party complaining, or to the use of her Majesty, or to the company by which the same was paid into court, as the court or judge shall direct.

(*e*) The last clause of this act, sect. 7, applies to the obligations of companies, as common carriers, and will be found in the chapter on that subject, post, Part II., s. ii.

(*f*) *Barret v. Great Northern R. Co.*, 26 L. J. (C. P.) 83; 1 C. B. (N. S.) 423. However, in *Attorney-General v. Same*, 29 L. J. (Ch.) 801, Kindersley, V. C., said, "It is clear that the grievance which this act was intended to prevent was where a certain individual was suffering detriment, by reason of the company not acting impartially between that individual and some other person, or it might happen between

two companies. But it must be a case of *private* mischief, arising from partiality on the part of the railway, with respect to the carriage of the goods of those individuals. It does not apply to the case where the public (that is, the Attorney-General on behalf of the public) is complaining, not that you are carrying A's goods in preference to B's goods, but that there is a general detriment not to any particular individual—not even to coal owners in particular—but a detriment to the public, who are consumers of the coal. That is the complaint, and this act does not appear to me to touch that question in the smallest degree.

(*g*) *Ransome v. Eastern Counties R. Co.*, 26 L. J. (C. P.) 91; 1 C. B. (N. S.) 437; and see *Nicholson v. Great Western R. Co.*, 28 L. J. (C. P.) 89; 5 C. B. (N. S.) 366; post, 459.

derive equal profits to itself. But, as in that case it was manifest from the affidavits, that the company charged R., a coal merchant, at Ipswich, who sent from thence coal, which had come by sea, a higher rate for the carriage of his coal over the companies' lines than they charged P., who had made agreements with them to carry large quantities from Peterborough over their lines, and that the sums charged to P. were fixed so as to enable him to compete with R., the court granted an injunction enjoining the company to desist from giving any undue preference to P., and to carry coal for R. on equal terms with P., due regard being had to the circumstances, if any, which rendered the cost to the company less in carrying for the one than for the other. And in a case (*h*) in which it appeared that the N. E. R. Co., from a desire to introduce northern coke into Staffordshire, were induced to make special agreements with different merchants for the carriage of coal and coke, at a rate lower than their ordinary charge, it was held that this was not a legitimate ground for making such agreements, and that lowering their rate for that purpose, *there being nothing to show that the pecuniary interests of the company were affected*, was giving an undue preference to that traffic. But the court refused in that case to require the company to provide trucks for the carriage of coal and coke, for a merchant who refused to pay demurrage for them, at the same rate as was charged to all other merchants under similar circumstances.

*Railway and
Canal Traffic Act,
1854.*

*Oxlade v. North-
Eastern R. Co.*

However, in a subsequent case (*i*), it was held not giving an undue or unreasonable preference within the meaning of the act of Parliament, for a railway company to carry goods for A. at a lower rate than for B., in consideration of A.'s *guarantee for large quantities and full trains at regular periods*, provided the real object of the company was to obtain thereby a *greater remunerative profit* by the diminished cost of carriage, although the effect was to exclude from the lower rate B., who could not give such a guarantee.

Amount of
traffic guaran-
teed.

*Nicholson v.
Great Western
R. Co.*

It is not a sufficient ground for the interference of the court, that a railway company charge higher fares for distances on one branch line than they charge for equal distances on another, if all persons travelling on one branch are charged the same; nor that they issue third-class return tickets on one branch line and not on another; nor will the court interfere with the arrangements of a railway company respecting the number of trains that stop or the times at which they stop at any particular station, unless it be distinctly shown that such

Higher fares on
one branch than
another not un-
due, if equal to
all.

*Caterham R. Co.
v. Brighton R. Co.*

(*h*) *Oxlade v. North Eastern R. Co.*, 26 L. J. (C. P.) 129; 1 C. B. (N. S.) 454. In this case the court referred certain questions to the Master, and acted on his report, a course also pursued in *Nicholson v. Great Western R. Co.*, *ubi supra*.

(*i*) *Nicholson v. Great Western R. Co.*, *ubi supra*. See also *acc. Strick v. Swansea Canal Co.*, 33 L. J. (C. P.) 240; 16 C. B. (N. S.) 245; and see *Garton v. Bristol and Exeter R. Co.*, *post*, 466.

*Railway and
Canal Traffic Act,
1854.*

arrangements do not sufficiently provide for the accommodation of the public (*k*). And where a railway company issued third-class return tickets to stations a certain distance only down their line, the court refused to enjoin them to issue such tickets to stations beyond that distance (*l*).

Again, it has also been held in Scotland not to be an undue prejudice to passengers at an intermediate station, to charge them more in proportion to the distance travelled than is charged to passengers at a terminal station, if all passengers from such intermediate station are charged equally (*m*).

Agreement with
one coal-owner to
carry for less than
others, undue.

*Harris v. Cocker-
mouth and Work-
ington R. Co.*

A railway company (*n*) being threatened by the owner of extensive collieries, which he had at considerable expense connected with their line, that unless they agreed to carry his coals to W., the terminus of their line, at a certain rate, he would construct a tramway from his collieries to W., and so divert his coal traffic from their line altogether, entered into an agreement with him accordingly, under which they carried his coals at such rate, being a less rate than they charged the proprietors of other collieries situate in the same district for the carriage of their coals over the same portion of the line, it was held that this was an undue preference within the meaning of the act, and the court granted an injunction. Cockburn, C. J., saying:—

“I quite agree that this court has intimated, if not absolutely decided, that a company is entitled to take into consideration any circumstances, either of a general or of a local and peculiar character, in considering the rate of charge which they will impose upon any particular traffic. As for instance, if a company were to lay down a rule, that if a certain large quantity of goods were brought to be conveyed, they could charge less for the conveyance of that large quantity, than they would for the conveyance of a less quantity, regard being had to the cost of working the particular line; that would be a very fair ground to justify them in making a distinction between the case of a person who sent a ton of goods at a time, and a person who sent only a hundred weight. So also, if a company were to make a distinction between terminal traffic and intermediate traffic, there might be very fair and sufficient reasons for their so doing. As for instance, in respect of terminal traffic there might be competition with another railway, and in respect of terminal traffic as distinguished from intermediate traffic it might well be they could afford to carry goods over the whole line cheaper, or proportionably so, than they could over an intermediate part of the line. But in all such cases the general public would be treated with perfect equality, although, as regards the charges between one place and another, there might be an apparent, though, for the reasons I have referred to, no real injustice. But those cases are very different from the present. Here, there

(*k*) *Caterham R. Co. v. London and Brighton R. Co.*, 26 L. J. (C. P.) 161; 1 C. B. (N. S.) 410. In that case the court intimated an opinion that a covered station is a reasonable accommodation, which a railway company is bound to provide for the public.

(*l*) *Caterham R. Co. v. London and Brighton R. Co.*, *ubi supra*.

(*m*) *Hozier v. Caledonian R. Co.*, 17 Fr. M. & M'P. 302; L. T., 17 Mar. 1855. But see what is said on this point by Cockburn, C. J., in *Baxendale v. Great Western R. Co.*, 28 L. J. (C. P.) 84, post, 464.

(*n*) *Harris v. Cockermouth and Workington R. Co.*, 27 L. J. (C. P.) 162; 3 C. B. (N. S.) 693.

are collieries situate in the same locality, and a distinction is made between them upon the ground that L. or his tenants would send their coals by some other conveyance, either by the ordinary mode, or by some railway which L. would be induced to construct if the company did not give him this advantage over others who are competing with him in the sale of coals. In my opinion, that is not a sufficient ground for making the distinction. Whatever rule the company may lay down, it ought to be a rule applicable to all persons similarly circumstanced. I do not think that this is such a rule. It is plain, that if we were to take into consideration the circumstances upon which counsel relied, there is no case in which we should not be called on to enter into a consideration of the various circumstances, which may influence one person as distinguished from another in sending his goods by a particular railway. Circumstances differ in every individual case, and it might always be a question of how far the company would be justified in making particular bargains. I do not think it was the intention of the legislature, or its policy, when railways were constituted, that they should have the power of making bargains with particular individuals, so as to give them advantages and subject others to corresponding disadvantages. The intention of the legislature was, I think, to give equal advantages, so far as the rate of charge is concerned, to all individuals similarly circumstanced; and that a railway company, although they should have a right to lay down certain rules in reference to particular circumstances, provided they act *bonâ fide* with regard to their own interests and the interests of the public, should not be at liberty to make particular bargains with particular individuals, whereby one person is benefited and another injured."

Railway and Canal Traffic Act, 1854.

Harris v. Cocker-mouth and Workington R. Co.

Where a railway company adjusted certain districts within which they carried coals at reduced rates, for quantities not less than a train load, 200 tons, and those districts were so adjusted that the places where the complainants (who were coal dealers at I.) dealt, instead of being put into one district, were distributed into three, so that it was necessary for them, in order to take advantage of the reduced rates, to send three train loads from I. into each district, which was more than their traffic demanded, whereas, for dealers sending coals from P., a single district was constituted, comprising, besides other places, those at which the complainants dealt, and so afforded a traffic requiring coals enough to enable the P. dealers to take advantage of the lower rates; the court refused to interfere, as it was not shown that the complainants were unduly subjected to this disadvantage, or that it was caused by undue preference, the adjustment of districts not being disadvantageous to the public at large or objectionable in other respects (o). But as the company made a scale of charges for the

Adjustment of districts, not undue.

Ransome v. Eastern Counties R. Co.

(o) *Ransome v. Eastern Counties R. Co.*, 27 L. J. (C. P.) 166; 4 C. B. (N. S.) 135. The company afterwards charged the reduced rates for the carriage of coals consigned by dealers at P., in the prescribed quantities of thirty-five trucks for one of such districts, though not carried by the company in one train all the way, the company, for their own convenience in consequence of steep gradients, which would otherwise have required extra steam power, detaching at C. some of the trucks from the train, and sending them on afterwards by

the ordinary goods or other trains to which they might be advantageously attached. None of the coals were ever left at C. for consumption there, but were all carried to the district to which they had been so consigned. It was held that by so doing the company had not given an undue preference to the consignors at P., since the tariff being valid, it was immaterial how the company carried coals most conveniently to themselves, provided the tariff was not infringed. *Same v. Same*, 29 L. J. (C. P.) 329; 8 C. B. (N. S.) 709.

*Railway and
Canal Traffic Act,
1854.*

*Ransome v.
Eastern Counties
R. Co.*

*Unloading goods
of one customer
and not another.*

*Cooper v. London
and South-
Western R. Co.*

carriage of coals from P. and from I., to places on their line at which the complainants dealt, the effect of which was to diminish the natural advantages which the position of the dealers at I., by reason of its greater proximity to those places, gave them over the dealers at P., by annihilating in point of expense of carriage a portion of the distance between P. and those places, it was held that an undue preference was thereby given to the dealers at P. (*p*).

A railway company which had been in the habit of unloading goods conveyed by them on their railway, by taking them out of the trucks and placing them in or adjacent to the waggons of the consignees, established a new system, under which they declined to allow their servants to unload C.'s goods from their trucks without extra pay. They, however, continued to unload P.'s goods, as these, from the smallness of their quantity, were not carried, like C.'s in separate trucks, but were mixed with the company's own traffic, and it was therefore for the convenience of the company that they unloaded them from the trucks; the court refused to grant an injunction enjoining the company to unload the trucks containing C.'s goods, and to deliver such goods to C., by placing the same in or adjacent to his waggons. But they intimated an opinion, that if C. had previously complained to the company of their giving an advantage to P. over him in so unloading P.'s goods, and the company had not afterwards removed such ground of complaint, the court would have interfered to prevent the continuance of such undue advantage, although the rule nisi for an injunction was not framed for such a case (*q*).

*Preference to cus-
tomer on other
lines of company.*

*Baxendale v.
Great Western
R. Co. (Bristol
case).*

*Charge for car-
riage high enough
to include collec-
tion and delivery,
undue.*

*Baxendale v.
Great Western
R. Co. (Reading
case).*

Where a preference was given by a railway company to a customer, who engaged to employ other lines of the company, distinct from and unconnected with that in respect of which such preference was granted, it was held to be an undue preference (*r*).

A railway company formerly charged a uniform rate of 3s. 6d. per ton on all goods conveyed on their line between R. and P. The goods were collected and delivered both by the company and B. at 4s. 10d. per ton. The company, who had power under their acts to impose their own rates of charge for *carrying*, but no power to impose tolls for *collecting and delivering*, raised the charge for *carrying* to 8s. 4d., being the aggregate of the above two charges, with an intimation to the public that they would *collect and deliver* goods free of all charge. The real purpose of this arrangement was to compel persons, desiring to have their goods conveyed by the railway, to employ the company to collect and deliver such goods, and thus to secure this business and the profits upon it to the company, as well as to exclude B. from competing with them in this department of busi-

(*p*) *Ransome v. Eastern Counties R. Co.*,
27 L. J. (C. P.) 166.

(*q*) *Cooper v. L. and South-Western R. Co.*,
27 L. J. (C. P.) 324; 4 C. B. (N. S.) 738.

(*r*) *Baxendale v. Great Western R. Co.*
(Bristol case), 28 L. J. (C. P.) 69; 5 C. B.
(N. S.) 309.

ness. It was held, that this arrangement was an undue preference to the company in their separate capacity of carriers other than on the line of railway and also an undue prejudice to B. (s). In giving judgment in that case, Cockburn, C. J., said:—

*Railway and
Canal Traffic Act,
1854.*

*Baxendale v.
Great Western
R. Co. (Reading
Case).*

“The main stand made by the counsel for the company was on the ground, first, that, although the legislature has imposed on railway companies the obligation of affording accommodation on equal terms to the public, it cannot have been the intention to deprive them of the right possessed by all trading companies as well as by individuals of using their property and managing their affairs, within the scope of the purposes for which they are constituted, in such manner as they think most to their advantage; and, secondly, that in the present instance the company had, by act of Parliament, the power of raising their tolls at their own will and pleasure, provided they raise them equally as against all persons; that here they have raised them equally against all, and that it was not within the authority of this court to fix limits to the amount of accommodation which the company might think proper to afford gratuitously, beyond the conveyance by the railway for which the toll was charged. We think there is little difficulty in disposing of this argument. It is abundantly clear from the statutory enactments, which enjoin on railway companies the obligation to afford accommodation on equal and reasonable terms, and from the provisions of the statute by which jurisdiction is given to this court against the affording of undue preference, or the imposing of undue prejudice or disadvantage, that it was not the intention of the legislature to leave to railway companies the unfettered exercise of their rights as proprietors of their respective lines; but in return for the great power which it has conceded to them, and the monopoly of the carrying business of the country, which in a great degree they have been enabled to acquire, it has imposed upon them the obligation of affording accommodation on equal terms to the whole of the public. The policy and justice of such a requirement are manifest, it being obvious that the powers of a railway company, and its monopoly, under the impossibility of all competition, might otherwise be converted into a means of very grievous oppression by a difference in point of charge, or in point of accommodation made in favour of one man at the expense of another, or by disadvantages in respect either of charge or accommodation imposed on one as compared with another. And it is plain, that the oppressive effects of such inequality will be equally great, whether its motive and operation be to benefit third parties, or the railway company itself. Such being plainly the intention of the legislature, and this court having been constituted the tribunal by which any injustice or inequality of the working of the railway system, as between the companies and the public, are to be redressed; we must endeavour to prevent any injustice either in the rate of charge or the degree of accommodation afforded. At the same time we must carefully avoid interfering, except where absolutely necessary for the above purpose, with the ordinary rights which (subject to the before-named qualification) a railway company in common with every other company or individual possesses, of regulating and managing its own affairs, either with regard to charges or accommodation, or to the agreements and bargains it may make in its particular business. Greater difficulty, no doubt, arises in dealing with cases in which the purpose and effect of the matter to be considered, although

(s) *Same v. Same* (Reading case), 28 L. J. (C. P.) 81; 5 C. B. (N. S.) 336; and see *Garton v. Same*, 28 L. J. (C. P.) 158; 5 C. B. (N. S.) 669; *Same v. Bristol and Exeter R. Co.*, 28 L. J. (C. P.) 306; 6 C. B.

(N. S.) 639; *Baxendale v. Great Western R. Co.*, 32 L. J. (C. P.) 225; 14 C. B. (N. S.) 1; 33 L. J. (C. P.) 197; 16 C. B. (N. S.) 137.

*Railway and
Canal Traffic Act,
1854.*

*Baxendale v.
Great Western
R. Co. (Reading
Case).*

it may incidentally have the effect of prejudicing third parties, is in reality to benefit the company itself, than in those in which the immediate object is to give an undue advantage for the benefit of a third party. Yet we think, that no serious difficulty will be found in ascertaining the principles on which the authority of the court should be exercised. It may be convenient, in the first place, to advert to a distinction, not always kept sight of in argument, between cases in which the interests of the company sought to be promoted by the regulation or act complained of, is one which arises with reference to the railway itself as to which the question occurs, and those in which the benefit sought to be obtained by the company is one which has reference to interests distinct from those of the particular railway, as where, for example, the company are the proprietors of another railway, or carry on some other business. In the latter class of cases, it appears to us clear that the company must be taken to be, quoad the particular railway, in the position of third parties, and that they cannot, with a view to such separate interests, give an undue preference or impose an unreasonable disadvantage, any more than they could do so to promote the interests of any other party. Thus, if a railway company being promoters of one line from A. to B., and of another line from C. to D., were, in order to obtain the custom of a particular individual on the first of those lines, on which they might be subject to competition from a rival line, to agree to convey his goods on the line from C. to D. at a cheaper rate than those of another person using only the latter line; or if a railway company carrying on, in addition to its business as carriers on the line, that of carriers to and from the termini of the railway, were, with a view to obtain additional custom in the latter, to carry on the railway for those who employed them as carriers to and from the railway at a lower rate than those who did not; in both these cases we should have no difficulty in holding that the company must be considered, as regards those separate interests, in the light of third parties, and that they cannot promote those interests at the expense of the right of the public to that equality on the particular railway which it was the intention of the act of Parliament to secure. Greater difficulty and nicety arise in dealing with cases in which the purpose and effect of the thing complained of is the benefit of the company in their character of proprietors of a particular railway. In these cases, the court might feel greater reluctance to interpose, partly from an unwillingness to interfere with the parties in the management of their own affairs for their own advantage, partly from a disposition to give companies credit for acting on an enlightened view of their own interests as identified with those of the public; yet if the court became clearly satisfied that the company were seeking to promote its own advantage by establishing an inequality which was unreasonable under the circumstances and operated unfairly and injuriously on particular individuals, or that it was affording to one person or set of persons an advantage which it would not afford to another under similar circumstances, this court would not hesitate to interfere to prevent such a result, although by so doing they might prevent the company from securing all the profit that it might otherwise derive from the use of its property. Thus, were a complaint made that a railway company, as between two intermediate stations, charged a higher rate than was due to the intermediate space, in proportion to the charge made on the entire line of railway; this court, if it were made to appear that the disproportion was not justified by the circumstances of the traffic,—in other words, was an undue prejudice or unreasonable disadvantage to those using the part of the railway in question,—would interfere to set aside such arrangement (*t*). So, again, if an arrangement were made by a railway company, whereby persons bringing a larger amount of

(*t*) But see *Hozier v. Caledonian R. Co.*, ante, 460, note (*m*).

*Railway and
Canal Traffic Act,
1854.*

*Baxendale v.
Great Western
R. Co. (Reading
Case).*

*As to raising rates
for carrying, so as
to include collec-
tion and delivery.*

traffic to the railway should have their goods carried on more favourable terms than those bringing a less quantity, although the court might uphold such an arrangement as an ordinary incident of commercial economy, provided the same advantages were extended to all persons under the like circumstances; yet it would assuredly insist on the latter condition, and would interfere in the case of any special agreement by which the company had secured to a particular individual the benefit of such an agreement to the exclusion of others, or even where an attempt had been made, by keeping the agreement secret, to make it operate unduly to the prejudice of third parties. This reasoning appears to us effectually to dispose of the argument that the court cannot interfere to prevent a railway company from fixing the rate of tolls to be taken on its railway, in such manner as shall best promote its own interests, in cases where, by so doing, the company subjects others to unreasonable disadvantage, or operates to their prejudice by giving undue preference to third parties. We proceed to consider the second ground taken by the defendants, which is in substance, that having power to raise their rates of charge for carrying on their line, and having done so equally as regards all, they do not come within the statutory prohibition against undue preference or undue prejudice, by affording other accommodation in addition to that of carrying on their line. We think this argument rests on two obvious fallacies: that of supposing the charge in question is one made by the company, in reference to their character and interest with respect to the railway; whereas in reality the charge is made by them in a character and interest independent of the railway, namely, as carriers to and from the termini of the railway; and secondly, that the company can convert that which is in reality a charge for collecting and delivering, as well as for carrying, into one for carrying only, by affixing to it the latter denomination in their table of fares. It is true, no doubt, that the company's acts give them power to impose their own rates of charge for the carriage of this description of traffic; but these acts give them no power to impose tolls or charges for collecting and delivering, and it is palpably an abuse of their powers, if, under the name of a charge for carrying on their line, they impose, otherwise than with the assent of the parties concerned, a charge for a totally different thing; and again, although the legislature has conferred the power of imposing rates and charges, it has annexed to this power the obligation of imposing such rates equally, and the company cannot be permitted to evade this obligation by colourably pretending that that is a charge for carriage only, which is in fact a charge for other things as well as for carriage. The court is bound to look at the transaction in its true light, and cannot suffer itself to be diverted from its duty of interfering to prevent what in effect is such an injustice, as it was the purpose of the legislature to prevent, because the transaction is attempted to be covered over by a transparent disguise. Looking then at the alteration in the tolls, in its true light, we are of opinion that the arrangement is objectionable both as an undue preference given on the one hand, and as an unreasonable disadvantage imposed on the other. It is an undue preference to the company in their separate capacity of carriers other than on the line of railway, inasmuch as they thereby practically secure to themselves the entire monopoly of the last-mentioned traffic, to the entire exclusion of the complainants and all others. It is an undue prejudice, and an unreasonable disadvantage imposed on the complainants, inasmuch as it is plain that their goods and those of all persons employing them, as indeed the goods of all persons other than those who employ the company to collect and deliver, must be subjected, as compared with the goods of the latter twice over, to the expense attendant on collecting and delivering, if they employ others to collect and deliver for them, or to an unnecessary charge if they require no such accommodation."

Garton v. Bristol and Exeter R. Co.

Similar principles were acted on in the following case (*u*). A railway company refused to receive goods sent to their station by the public generally after a quarter past five o'clock p.m., to be forwarded by the goods train, which left such station on the same night, but they received goods for the same train brought there by their agent W., as late as eight o'clock p.m. W. had a receiving office for goods about a mile from the station, where he weighed, classified and prepared the goods for loading, which must otherwise have been done at the station, and but for which having been so previously done, the goods could not generally have been received at the station at so late an hour. On the goods so received at his office, W. made a charge for conveying them to the station, in addition to the company's usual rates of charge for carriage upon the railway. It was held that the facility so given to W. for forwarding goods after the station was closed to others, was an undue prejudice to those who did not wish to have their goods conveyed to the station for them. And in the same case it was also held, that a preference with respect to a reduced rate of carriage of certain goods given by a railway company to certain individuals, in consideration of their contracting to have all such goods consigned to them through the railway and not by water or other means, is an undue preference, unless it be clearly shown that it is done in order to prevent a competition with the railway, or that there is secured thereby to the company such an amount of traffic as to compensate for making the reduced rate (*x*).

Injunction granted to admit omnibus to station.

Marriott v. London and South-Western R. Co.

But refused to cab proprietor, no public inconvenience being shown.

Beadell v. Eastern Counties R. Co.

Where a railway company having made an arrangement with W. for the conveyance of passengers to and from their station to the town of K., admitted his omnibus within the gates of the station, but refused to admit the omnibus of M., which conveyed passengers to and from the station, through K., to more distant places to which it was the only public conveyance, and showed no special circumstances to justify the exclusion of M.'s omnibus; the court made absolute a rule enjoining the company to admit M.'s omnibus in the same manner, and to the same extent, as they admitted other vehicles of a similar description (*y*). But where a railway company made arrangements with one cab proprietor, whereby they gave him the exclusive right to have his cabs standing and plying at their station, and another cab proprietor, who had been refused leave for his cabs to stand and ply at the station, applied for an injunction under this act,

(*u*) *Garton v. Bristol and Exeter R. Co.*, 28 L. J. (C. P.) 306; 6 C. B. (N. S.) 639.

(*x*) *Ibid.*; and see cases cited, ante, p. 459, note (*i*).

(*y*) *Marriott v. London and South-Western R. Co.*, 26 L. J. (C. P.) 154; 1 C. B. (N. S.) 499. In this case it was also held, that a rule calling on the company to show

cause why they should not act in compliance with the Railway and Canal Traffic Act was too vague. See *Barber v. Midland R. Co.*, 18 C. B. 46, where it was held that an action would not lie against a railway company for refusing to admit vehicles within the precincts of a station.

the application was refused, as it did not appear that the arrangement was not advantageous to the public (z).

Some other regulations affecting traffic must now be noticed.

The gauge on which railways for the conveyance of passengers must be constructed has been already mentioned (a). Gauge of railways.

With respect to the statutory provisions relating to the engines and carriages which may be used and brought upon railways, they seem to show that it was in the contemplation of the Legislature to treat a railway as a common highway, open alike to all persons who may choose to put carriages thereon (b). The Railways Clauses Consolidation Act enacts, on this subject, that, on payment of the tolls demandable, all companies and persons shall be entitled to use the railway, with engines and carriages properly constructed, subject to 5 & 6 Vict. c. 55, and to the regulations made by the company (c). Regulations as to engines and carriages to be used on railways.
8 & 9 Vict. c. 20, s. 92, App. 92.

And, with respect to the engines and carriages to be brought on the railway, it is enacted, that every locomotive steam-engine must be constructed on the principle of consuming its own smoke, otherwise the party using it is liable to a penalty (d). No engine may be brought on the rails, unless first approved of by the company; and, on receiving notice, the company are required to send their agent to examine the engine, and to report thereon; and within seven days after the report, if the engine be proper to be used, the company must give a certificate of their approval. If an engine is out of repair, or unfit to be used, the company may forbid its use until it has been repaired; and, in case of a difference of opinion as to the fitness of an engine or carriage, the same is to be settled by arbitration. If improper engines or carriages are brought upon the railway, or used, a penalty is incurred (e). No carriage may be upon the railway (except in directly crossing the same) unless it be of the construction, and in the condition which the regulations of the company Sect. 114.
Sect. 115.
Sect. 116.

(z) *Beadell v. Eastern Counties R. Co.*, 26 L. J. (C. P.) 250; 2 C. B. (N. S.) 509.

(a) Ante, p. 436.

(b) *R. v. Severn and Wye R. Co.*, 2 B. & Ald. 648. Experience has, however, proved that, for purposes of safety, it is essentially necessary that the traffic on a railway should be exclusively under the control of the company. See *R. v. London and South-Western R. Co.*, 1 Q. B. 558; *R. v. Grand Junction R. Co.*, 4 Q. B. 38, post.

(c) As to the regulations which the company may make, see post, 486.

(d) 8 & 9 Vict. c. 20, s. 114, post, App. 95. It has been held that the penalty only attaches where the engine using coal, &c. is so constructed as not to consume its own smoke when used with proper care and

under ordinary circumstances; and, therefore, where an engine is properly constructed, but owing to the carelessness of the persons using it the smoke is emitted instead of being consumed, there is no liability to a penalty under this section. *Manchester, Sheffield and Lincolnshire R. Co. v. Wood*, 29 L. J. (M. C.) 29; 2 Ell. & Ell. 344.

(e) These sections contain nothing which deprives the railway company of the common law right to distrain an uncertified engine, damage feasant, if it comes on their railway; and the remedy given by sect. 116 is cumulative. *Ambergate, &c. R. Co. v. Midland R. Co.*, 23 L. J. (Q. B.) 17; 2 E. & B. 793.

*Regulations as to
Engines and Car-
riages to be used
on Railways.*

8 & 9 Vict. c. 20,
ss. 116, 119, App.
95.

Sect. 118.

Sect. 120.

Sect. 122.

Sect. 124.

require (*f*). All regulations made by the company respecting carriages must be in writing under their common seal, and must be applicable alike to the carriages of the company, and to the carriages of other persons using the railway; and a copy of such regulations may be demanded by all persons. The owners of carriages using the railway must enter their names, and the number, weights, and gauges of their carriages, and also paint the same particulars on the carriages, if required so to do; and the carriages may be measured, &c. at the expense of the company; on default, the company may remove the carriage. If the carriage of any person using the railway be improperly loaded, or suffered to obstruct the railway, it may be unloaded or removed, and all expenses must be paid by the owner; and the company are not liable for any damage or loss occasioned by unloading or removing a carriage or goods, except for their wilful or negligent acts, or any wrongful detainer. The owners of engines and carriages on the railway are answerable for any trespass or damage done by them or their servants, and servants may be convicted before two justices; and the owner may recover any money paid by him from his servant, in the manner prescribed.

II. *Obligation to convey Her Majesty's Mails (g).*

Obligation to
convey her Ma-
jesty's mails.

The obligations imposed on railway companies to convey the mails are contained in 1 & 2 Vict. c. 98 (*h*), 7 & 8 Vict. c. 85, s. 11 (*i*), and 10 & 11 Vict. c. 85, s. 16 (*k*); and by a clause always inserted in each special railway act, the company are made liable to the provisions of these general acts.

The above-mentioned general acts are applicable to railways, whether the carriages used are impelled by steam, locomotive or stationary engines, or animal or other power (*l*); and no company can make bye-laws repugnant to these acts (*m*).

The Postmaster-General is authorized, by notice delivered to any railway company (*n*), to require that the mails shall be forwarded on the railway, either by the ordinary or special trains, at such hours or times in the day or night as the Postmaster-General shall direct,

(*f*) 8 & 9 Vict. c. 20, s. 117, post, App. 95. See *Rhymney R. Co. v. Taff Vale R. Co.*, 30 L. J. (Ch.) 482.

(*g*) In the Appendix to the Fifth Report of the Select Committee on Railway and Canal Bills (House of Commons), presented in Session 1853, a report and draft bill, suggesting various alterations in the existing arrangements, will be found, see p. 243. The obligations of a company, as common carriers, are the subject of a separate chapter, post, 497.

(*h*) Post, App. 2.

(*i*) Post, App. 20.

(*k*) Post, App. 111.

(*l*) 1 & 2 Vict. c. 98, s. 1, post, App. 2.

(*m*) Id. s. 11, post, App. 4.

(*n*) Notices may be delivered to any director, secretary, or clerk, or be left at any station on the railway. 1 & 2 Vict. c. 98, s. 15, post, App. 5. Lessees and tenants or proprietors for the time being are included in the terms used in the act. Id. s. 19, post, App. 6.

*Obligation to
convey her Ma-
jesty's Mails.*

together with the guards in charge thereof, (or without such guards (*o*)), and any other officer of the Post-Office; and thereupon the company are required, at their own cost, to provide sufficient carriages and engines on the railway for the conveyance of the mails to the satisfaction of the Postmaster-General, and to receive, take up, carry and convey, by such ordinary or special trains or otherwise, as need may be, all mails or post letter-bags, as shall for that purpose be tendered to them by any officer of the Post-Office; and also to receive, take up, carry, and convey in the carriages carrying such mails, &c., the guards in charge thereof, and any other officers of the Post-Office; and to receive, take up, deliver, and leave such mails, &c., guards and officers, at such places in the line of the railway, on such days, at such hours and times in the day or night, and subject to all such reasonable regulations and restrictions, as to speed of travelling, places, times, and direction of stoppages and times of arrival, as the Postmaster-General shall, from time to time, order and direct. And it is provided, that the rate of speed to be required shall in no case exceed the maximum rate of speed prescribed by the directors for the conveyance of passengers by the first-class trains; but that no alteration in the rate of speed of any train by which the mails are conveyed shall be made, until six months' previous notice be given to the Postmaster-General, of any such intended alteration (*p*). The subsequent statute, 7 & 8 Vict. c. 85, amended the law with respect to certain railways, as to the rate of speed (*q*).

The Postmaster-General may also require that the whole of the inside of any carriage shall be exclusively appointed for the purpose of carrying the mail (*r*); and that separate carriages be provided for the purpose of sorting letters (*s*); also, that mail coaches or carts shall be conveyed on the trucks or frames used on the railway (*t*), or that a mail-guard shall be conveyed, with bags of a specified weight, by any trains other than a mail train, upon the same conditions as any other passengers (*u*). And the officers, servants, and agents of a railway company engaged in carrying the mails are required to obey, observe and perform all such reasonable regulations respecting

(*o*) 10 & 11 Vict. c. 85, s. 16, post, App. 111.

(*p*) 1 & 2 Vict. c. 98, s. 1, post, App. 2.

(*q*) 7 & 8 Vict. c. 85, s. 11, post, App. 20.

(*r*) 1 & 2 Vict. c. 98, s. 2, post, App. 3.

(*s*) *Id.* s. 3.

(*t*) *Id.* s. 4.

(*u*) 7 & 8 Vict. c. 85, s. 11, post, App. 20. But it is provided, that this shall not be construed to authorize the postmaster-general to require the conversion of a regular mail into an ordinary train, or to

exercise any control over the company in respect of any ordinary train: nor shall the company be responsible for the safe custody or delivery of any mail bags so sent. See also *R. v. Irish South-Eastern R. Co.*, 1 Ir. Law R. (N. S.) 29. The company are however liable to be sued by an officer or servant of the post office, if he sustains an injury whilst travelling over the railway, through the negligence of the company. *Collett v. L. and N. W. R. Co.*, 20 L. J. (Q. B.) 411; 16 Q. B. 984.

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jesty's Mails.*

the conveyance, delivering, and leaving of mails and post letter-bags, guards and officers of the Post-Office, mail coaches, or carts and carriages on the railway, or on the line thereof, as the Postmaster-General, or such officer of the Post-Office as he shall nominate, shall, in his discretion, from time to time give or make. But it is provided, that no such officer shall interfere with, or give orders to the engineer having the charge of any engine used upon the railway, and that any cause of complaint shall be stated to the conductor, or other officer having charge of the train, or to the chief officer at any station (*x*). And the Postmaster-General may require, in the manner prescribed by the before-mentioned act, 1 & 2 Vict. c. 98, that any mails and post letter-bags shall be conveyed and forwarded by any railway company on their railway, under and pursuant to the said act, notwithstanding any guard or other officer of the Post-Office shall not be sent with the same or in charge thereof (*y*). The term railway used in the last-mentioned act and in the 1 & 2 Vict. c. 98, shall include every railway then constructed, or thereafter to be constructed under the powers of any act of Parliament; and wherever the term railway company or company of proprietors is used in either of the said acts, it shall be construed to extend to include the proprietors for the time being of any such last-mentioned railway, and any lessees or tenants thereof (*z*). If the company or their servants refuse or neglect to perform any of the duties imposed upon them by 1 & 2 Vict. c. 98, the company are liable to forfeit 20*l.* for every offence (*a*), irrespective of their liability under the bond, which the Postmaster-General may, if he shall think fit, require any railway company to enter into. The form of this bond, and the sum in which it is taken, is in the discretion of the Postmaster-General, and it must be renewed from time to time whenever it becomes forfeited, or when the Postmaster-General shall require it to be renewed (*b*). The condition of the bond requires the company to perform all acts, matters and things which are by 1 & 2 Vict. c. 98, required to be done or performed by the company, their officers, servants and agents (*c*). With respect to railways, or parts of railways, demised by the company of proprietors before the passing of the act 1 & 2 Vict. c. 98, the lessees, and their assigns, during the continuance of such lease, are liable to perform all the above-mentioned duties, in lieu of the company of proprietors, except that such lessees (not being a body corporate or company), or

(*x*) 1 & 2 Vict. c. 98, s. 5, post, App. 3.

(*y*) 10 & 11 Vict. c. 85, s. 16, post, App. 111.

(*z*) *Id.* s. 20.

(*a*) 1 & 2 Vict. c. 98, s. 12, post, App. 4.

(*b*) If this bond be not given or renewed for one month after it is required by the

postmaster-general, a penalty of 100*l.* per diem is incurred. 1 & 2 Vict. c. 98, s. 13, post, App. 5. When stock or Exchequer bills may be deposited in lieu of a bond, see 6 & 7 Will. 4, c. 28, s. 1, and 1 & 2 Vict. c. 61.

(*c*) 1 & 2 Vict. c. 98, s. 13, post, App. 5.

their assigns, are not liable to give the before-mentioned bond for a sum exceeding 1,000*l.*, and cannot in any one year be liable in damages to any amount exceeding 1,000*l.* and costs (*d*).

Obligation to convey her Majesty's Mails.

The remuneration to be received by railway companies for the performance of the foregoing services is ascertained in the following manner:—First, it is provided, that the railway company shall be entitled to receive such reasonable remuneration as shall (either prior to or after the commencement of the services) be fixed and agreed on between the Postmaster-General and the company (*e*); or, in case of difference, then such remuneration as shall be determined by two arbitrators, one to be named by each party; and if such arbitrators cannot agree, then the amount is to be ascertained by an umpire, appointed by the arbitrators previously to their entering upon the inquiry (*f*). The arbitrators are to be appointed by each party within fourteen days after notice from the other, or, in default of such appointment, the arbitrator of the party giving notice may name the other arbitrator; and the arbitrators are required to make their award twenty-eight days after their appointment, or otherwise the matter shall be left to be determined by the umpire. If the umpire neglects or refuses to make his award for twenty-eight days, then another umpire must be appointed by the arbitrators, and so toties quoties (*g*). Although an agreement or award, as to the amount of remuneration, may have been made, the Postmaster-General may require, by notice in writing, any addition to be made to the services performed; and in such case, and also in case of a discontinuance of any part of the services, a fresh agreement must be entered into, or award made, as before mentioned, to settle the amount of remuneration to be paid for such increased or diminished services; and compensation may also be awarded for any loss occasioned by the discontinuance or alteration of the services previously agreed to be performed (*h*). The services required by the Postmaster-General to be performed are not in any case to be suspended, postponed or deferred by reason of the amount of remuneration not having been fixed upon, or by reason of an award not having been made (*i*).

Remuneration to be paid for conveying the mails.

After a contract or award settling the amount of remuneration has been in operation for three years, the railway company may require that the remuneration to be paid shall be again submitted to arbitration (*k*).

Lastly, the Postmaster-General is authorized to determine the performance of any services, by giving the company six months' notice in writing (*l*); or absolutely to put an end to any such services

(*d*) 1 & 2 Vict. c. 98, s. 14, post, App. 5.

(*e*) Id. s. 6, post, App. 3.

(*f*) Id. s. 16, post, App. 5.

(*g*) Id. s. 18, post, App. 7.

(*h*) 1 & 2 Vict. c. 98, s. 7, post, App. 4.

(*i*) Id. ss. 6, 7, 17, post, App. 4, 5.

(*k*) Id. s. 16, post, App. 5.

(*l*) Id. s. 8, post, App. 4.

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convey her Ma-
jesty's Mails.*

without giving any previous notice; but in the latter event it is provided, that, if the services are put an end to without any just cause, the company shall receive a full and fair compensation for all loss thereby occasioned (*m*). It is also declared, that the 1 & 2 Vict. c. 98, shall be construed according to the respective interpretations of the terms and expressions contained in the Post-Office Act, 1 Vict. c. 36, so far as those interpretations are not repugnant to, or inconsistent with, the context of such provisions; and that the act shall also be deemed to be a Post-Office act, and that the penalties therein mentioned may be recovered as penalties are recovered under the Post-Office acts (*n*); but any justice of the peace having jurisdiction may hear and determine any offence which may subject any company to a pecuniary penalty not exceeding 20*l*.

III. *Obligation to convey Her Majesty's Troops.*

*Obligation to
convey her Ma-
jesty's troops.*

5 & 6 Vict. c. 55,
s. 20, App. 15.

7 & 8 Vict. c. 85,
s. 12, App. 21.

By the annual Mutiny Acts, justices of the peace are empowered, in cases of emergency, to provide carriages and horses, by compulsory powers, for the transport of troops; and, it being considered desirable to make some similar provision for despatching troops by railways, the Legislature has provided, that, whenever it is necessary to move any of the officers or soldiers of the line, ordnance corps, marines, militia, or the police force, by railway, the directors are required to permit such forces, with their baggage, &c., to be conveyed at the usual hours of starting, at such prices, or upon such conditions, as may be contracted for between the Secretary-at-War and the railway company, upon production of a route or order for their conveyance, signed by the proper authorities. This is the only general legislative enactment now in force applicable to railway companies incorporated previous to 1844; but a subsequent statute requires railway companies incorporated, or obtaining an extension of their powers, by any act passed in 1844, or in any subsequent session (*o*), to provide the before-mentioned conveyance at fares not exceeding—

For each commissioned officer proceeding on duty	
in a first-class carriage	2 <i>d</i> . per mile (<i>p</i>).
For each soldier, &c., and their wives, or children	
above twelve years old	1 <i>d</i> . per mile.

(*m*) 1 & 2 Vict. c. 98, s. 9, post, App. 4.

(*n*) Id. s. 19, post, App. 6. As to recovery of penalties under 1 Vict. c. 36, see ss. 12 to 24.

(*o*) But a clause is now inserted in every special act, whereby the company are made subject to the General Railway Acts, in-

cluding 5 & 6 Vict. c. 55, and 7 & 8 Vict. c. 85.

(*p*) It would seem that the company cannot charge anything for a *fraction* of a mile, as 21 & 22 Vict. c. 75 only applies to cheap trains under 7 & 8 Vict. c. 85, s. 6. See post, 473, note (*u*).

Children under twelve, and above three years

old $\frac{1}{2}d.$ per mile.

Children under three years old Free.

*Obligation to
convey her Ma-
jesty's Troops.*

Such soldiers and their families must be conveyed in convenient and protected carriages; and every officer may carry one cwt., and soldier, soldier's wife, &c., half a cwt. of personal luggage, free of charge (*q*); all excess being paid for at the rate of not more than one halfpenny per pound. All public baggage, stores, arms, ammunition, and other necessaries and things, must be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military being given in loading and unloading such goods. But the company are not bound to convey gunpowder and other combustible matters, except upon such conditions as may be agreed upon by the Secretary-at-War and the company (*r*).

The above provisions have been also extended to sailors and naval coast volunteers (*s*).

IV. *Obligation to provide Third-Class (Parliamentary) Trains.*

All passenger (*t*) railway companies incorporated or obtaining an extension of their powers in or after 1844, are required, by means of one train at least, to travel upon their railway from one end to the other, once at least each way on every week-day, (except Christmas-day and Good Friday, but this exception does not extend to Scotland,) under the following conditions:—

Parliamentary
trains.
7 & 8 Vict. c. 85,
s. 6, App. 19.

- "To start at an hour to be from time to time fixed by the directors, subject to the approval of the Board of Trade.
- "To travel at an average rate of speed, not less than twelve miles an hour, including stoppages.
- "To take up and set down passengers (if required) at every passenger station.
- "Carriages to be provided with seats, and protected from the weather.
- "Fares not to exceed one penny for each mile (*u*).

(*q*) *Great Northern R. Co. v. Shepherd*, 21 L. J. (Exch.) 114; 8 Exch. 30, post, 474, note (*t*).

(*r*) 7 & 8 Vict. c. 85, s. 12, post, App. 20. By 23 & 24 Vict. c. 139, s. 20, it is enacted, that not more than one hundred barrels of gunpowder shall be conveyed at one time in any carriage forming part of a railway train. Sect. 18, which limits the quantity of gunpowder which persons other than manufacturers may "have or keep," does not apply to a carrier who has a larger quantity at a temporary halting place in the course of transit. See *Biggs v. Mitchell*, 31 L. J. (M. C.) 163; 2 Best & S. 523, on

the corresponding section of the repealed statute, 12 Geo. 3, c. 61, s. 11.

(*s*) 16 & 17 Vict. c. 69, s. 18, post, App. 21, note (*d*).

(*t*) See the definition of a passenger railway company, 7 & 8 Vict. c. 85, s. 25, post, App. 24.

(*u*) Under this clause it was decided in Ireland, that where a company charged $2\frac{1}{2}d.$ for a distance exceeding two and less than three miles, it was an overcharge which rendered the company liable to an action for damages. *Rice v. Dublin and Wicklow R. Co.*, 8 Ir. C. L. Rep. 160. In consequence of that decision an act of Parliament

*Parliamentary
Trains.*

“ Each passenger to be allowed half a cwt. of luggage (*t*), not being merchandise or other articles carried for hire or profit; and any excess to be charged by weight, at a rate not exceeding the lowest rate of charge for passengers' luggage by other trains.

“ Children under twelve years of age to be carried at half fare, and children under three years free.”

The foregoing enactment does not extend to the conveyance of third-class passengers on Sundays; but if a company runs *any* trains on that day, they are required, by such train (each way) as shall stop at the greatest number of stations, to provide carriages for third-class passengers, at a like fare of one penny for each mile (*u*). If any company refuse or wilfully neglect to comply with the foregoing provisions within a reasonable time, a penalty of 20*l.* per day is forfeited (*x*). But, for the relief of railway companies, it is provided, that no tax shall be levied upon their receipts in respect of the above-mentioned cheap trains (*y*). This exemption from duty, however, does not extend to any railway train which is not a train running on at least six days of the week, or else a train running to or from a market town on a market-day, and approved of by the Lords of the Committee of Privy Council for Trade and Plantations as a cheap train for the conveyance of passengers to or from market, or a train approved by the said Lords of the Committee of Privy Council as an ordinary train of the railway travelling on Sunday, and conveying third-class passengers at fares not exceeding one penny per mile (*z*).

The Board of Trade have a discretionary power to dispense with certain of the conditions imposed by 7 & 8 Vict. c. 85, if other more beneficial arrangements are substituted (*a*).

*Cheap trains for
labouring classes.*

The Metropolitan Railway (Finsbury Circus Extension) Act, 1864 (*b*), contains a provision compelling the company to run cheap trains for the labouring classes. And in many of the railway acts passed in 1864 (*c*) there is also contained a similar provision for the benefit of artisans, mechanics and daily labourers (both male and

was passed, 21 & 22 Vict. c. 75, post, App. (made perpetual by 23 & 24 Vict. c. 41), which enables the company to charge one penny for a portion of a mile where the distance does not amount to a mile, and a halfpenny for such portion where the distance amounts to more than a mile, if such portion amounts to or exceeds half a mile. Children to be charged halfprice.

(*t*) Husband and wife travelling together are entitled to 1 cwt. *Great Northern R. Co. v. Shepherd*, 8 Exch. 31. And see post, 525, note (*y*), as to luggage.

(*u*) 7 & 8 Vict. c. 85, s. 10, post, App. 20.

(*x*) *Id.* s. 7, post, App. 20.

(*y*) *Id.* s. 9, post, App. 20. And see *Attorney-General v. Oxford, W. and W.*

R. Co., 31 L. J. (Exch.) 218.

(*z*) 26 & 27 Vict. c. 33, s. 14.

(*a*) See ante, 448.

(*b*) 24 & 25 Vict. c. cccxxiii. s. 24.

(*c*) “ The London, Chatham and Dover (New Lines) Act, 1864,” 27 & 28 Vict. c. cxcv. s. 134; “ The Metropolitan Railway (Notting Hill and Brompton Extension) Act, 1864,” 27 & 28 Vict. c. ccxcii. s. 45; “ The Great Eastern Railway (Metropolitan Station and Railways) Act, 1864,” 27 & 28 Vict. c. cccxiii. s. 80; “ The Metropolitan Railway (Tower Hill Extension) Act, 1864,” 27 & 28 Vict. c. cccxv. s. 25; “ The North-Western and Charing Cross Railway Act, 1864,” 27 & 28 Vict. c. cccxxiii. s. 95.

female) having daily business in London, who must, if required, give their name and address and that of their employer. The liability of the company in respect of injuries to such passengers is limited by the acts of 1864; and the Board of Trade have certain controlling powers over these cheap trains.

*Parliamentary
Trains.*

V. *Regulations as to Leases of Railways (d).*

Railway companies are under various restrictions with reference to their powers of leasing a railway. The Railways Clauses Consolidation Act enacts, that, "where a company are authorized by their special act to lease the railway, or any part thereof, the lease to be executed in pursuance of such authority shall contain certain specified covenants; and such lease entitles the company or person to whom it is granted to the free use of the railway or portion of railway comprised therein, and of all the powers and privileges granted to and which might otherwise be exercised and enjoyed by the company," &c.; and such lessee shall be subject to all the obligations by that or the special act imposed on the company.

*Regulations as to
leasing railways.
8 & 9 Vict. c. 20,
s. 112, App. 94.*

Many of the special railway acts passed during the early part of 1845, contained general powers, enabling railway companies to grant or accept a lease, sale or transfer of their own or other lines of railway; but, it being afterwards considered that these powers ought not to have been granted, a statute was passed towards the close of that session, which enacts, that "it shall not be lawful for such companies, by virtue of any powers contained in any act passed in the then present session, to make or grant, or for any other railway company or party, by virtue of any such powers, to accept, a sale, lease or other transfer of any railway, unless under the authority of a distinct provision in some act of Parliament to that effect, specifying by name the railway to be so leased, sold, or transferred, and the company or party by whom such lease, sale, or transfer may be respectively made, granted, or accepted" (e).

*8 & 9 Vict. c. 96,
App. 102.*

By 21 & 22 Vict. c. 75, s. 3 (f), it is provided that it shall not be lawful for any canal or navigation company being also a railway company, or entitled to work any railway constructed under an act of Parliament, after 2nd August, 1858, to accept a lease of the whole or any part of the undertaking of any other railway and canal company, or of any canal or navigation company, or of the tolls, dues, or charges,

(d) See on this subject, ante, 63.

(e) These restrictions of the powers to lease railways arise from a jealousy, which has induced the legislature to institute inquiries, as to the effects likely to be pro-

duced by the amalgamation of railways. This subject is discussed in another part of this work. See ante, Chapter II.

(f) See post, App., made perpetual by 23 & 24 Vict. c. 41.

*Regulations as to
leasing Railways.*

upon or in respect of the whole or any part of any such undertaking, except under the powers of some act or acts in which the parties to any such lease shall be specifically named and authorized to enter into the same.

VI. *Powers enabling the Lords of the Treasury to revise Tolls or purchase Railways (g).*

Powers enabling the Lords of the Treasury to purchase railways, or revise the scale of tolls.

7 & 8 Vict. c. 85,
s. 1, App. 18.

If, after the end of twenty-one years from the passing of any railway act of 1844 or any subsequent session, the clear annual profits divisible upon the subscribed and paid-up capital stock of such railway, upon the average of the three then last preceding years, shall equal or exceed 10*l.* per cent., the Lords of the Treasury may, upon giving three months' notice to the company, revise the scale of tolls, fares and charges limited by the act relating to the railway, and fix such a new scale as shall be likely to reduce the divisible profits to 10*l.* per cent.; but no revised scale can take effect unless accompanied by a guarantee that the divisible profits, in case of any deficiency therein, shall be annually made good to the said rate of 10*l.* per cent.; and it is also provided, that a revised scale shall not be again revised, or the guarantee withdrawn, otherwise than with the consent of the company, for the further period of twenty-one years.

Sect. 2.

Or the Lords of the Treasury, at the end of the said period of twenty-one years (whatever be the rate of divisible profits), may, upon giving three months' notice to the company, purchase any such railway, upon payment of a sum equal to twenty-five years' purchase of the annual divisible profits, or, in certain cases, at a price to be fixed by arbitration; but no option to purchase can be exercised whilst a revised scale of tolls is in force.

Sect. 3.

The above-mentioned option of revision or purchase is not applicable to any railway authorized to be made by any act passed previous to the session 1844, or to any new branch of such railway, if less than five miles in length. It is also provided, that the option to purchase any new branch shall not be exercised without including the railway also.

Sect. 4.

The directors of railways within the provisions above mentioned are required to keep certain accounts of their receipts during the three years next preceding the period at which the option of revision or purchase becomes available.

No notice of revision or purchase can be given under the above-mentioned powers until an act of Parliament has been obtained for authorizing the said guarantee, or the levy of the purchase-money,

(g) A clause is now always inserted in every special act authorizing a future revision and alteration of tolls, see Commons Standing Orders, 1865, No. 162, ante, p. 26.

and for determining the manner in which the option shall be exercised; and three months' notice of the intention to apply for such act of Parliament must be given to the company affected thereby.

Powers to Purchase or Revise Tolls.

VII. *Obligation to permit Branch Railways to be made by Landowners.*

For the purpose of enabling branch railways to be made, in certain cases, the Railways Clauses Consolidation Act enacts, that "that or the special act shall not prevent the owners or occupiers of lands adjoining to the railway or any other persons (*h*), from laying down any collateral branches of railway to communicate with the railway for the purpose of bringing carriages upon it, but subject to 5 & 6 Vict. c. 55 (*i*), and the company are required, at the expense of such owners, &c., to make openings in the rails, in places where the communication can be made with safety to the public, and without injury or inconvenience; and the company may not take any toll for the passing of passengers, &c. along any branch; but the branch may not run parallel to the railway, and openings may not be made in certain places; and persons using the branch are subject to the company's bye-laws, and are required to lay down the most approved off-set plates and switches" (*k*).

Powers to lay down branch railways.

8 & 9 Vict. c. 20, s. 76, App. 89.

The powers which may be exercised by the Board of Trade in regulating branch railways have been already considered (*l*).

VIII. *Obligation to permit Telegraphs to be constructed.*

Every railway company is required to allow the Board of Trade to establish and lay down upon their lands a line of electrical telegraph for her Majesty's service, and to give every reasonable facility for laying down and using the same on her Majesty's service, subject to such reasonable remuneration to be paid to the company as may be agreed upon, or, in case of disagreement, as may be settled by arbitration. And it is provided, that, subject to a prior right of use for the purposes of her Majesty, the telegraph may be used by the company, for the purposes of the railway, upon terms to be agreed upon, or, in case of disagreement, as may be settled by arbitration. If a

Obligation to permit telegraphs to be constructed.

7 & 8 Vict. c. 85, s. 13, App. 21.

(*h*) The powers given by this section are not confined to the owners, &c. of land at the time the railway is made. See *Monkland, &c. R. Co. v. Dixon*, 3 Railw. C. 273; *Bishop v. North*, 11 M. & W. 418; 3 Railw. C. 459.

(*i*) See this act, post, App. 10.

(*k*) See *Bell v. Midland R. Co.*, 30 L. J. (C. P.) 273, which was an action for obstructing a branch constructed under a clause in a railway act similar to sect. 76, supra.

(*l*) Ante, 440.

Obligation to permit Telegraphs to be constructed.

line of electrical telegraph shall have been established by the company, or by any other persons, otherwise than exclusively for her Majesty's service, or exclusively for the purposes of the railway, or jointly for both, the use of such telegraph for the purpose of receiving and sending messages shall, subject to the prior right of use thereof for the service of her Majesty, and for the purposes of the company, and subject also to such equal charges, and to such reasonable regulations as may be made by the company, be open for the sending and receiving of messages by all persons alike, without favour or preference.

Injuries to electric or magnetic telegraphs.

24 & 25 Vict. c. 97, s. 37.

By 24 & 25 Vict. c. 97, s. 37 (which however does not extend to Scotland, sect. 78), it is enacted, that whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure or remove any battery, machinery, wire, cable, post, or other matter or thing whatsoever, being part of, or being used or employed in or about any electric or magnetic telegraph, or in the working thereof; or shall unlawfully and maliciously prevent or obstruct in any manner whatsoever, the sending, conveyance or delivery of any communication by any such telegraph, shall be guilty of a *misdemeanor*, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour: Provided, that if it shall appear to any justice, on the examination of any person charged with any offence against this section, that it is not expedient to the ends of justice that the same should be prosecuted by indictment, the justice may proceed summarily to hear and determine the same, and the offender shall on conviction thereof, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding three months, or else shall forfeit and pay such sum of money, not exceeding ten pounds as to the justice shall seem meet (*m*).

Attempt to injure telegraphs.

And by sect. 38. Whosoever shall unlawfully and maliciously, by any overt act, *attempt to commit* any of the offences in the last preceding section mentioned, shall on conviction thereof before a justice of the peace, at the discretion of the justice, be subjected to similar punishment.

Several private companies are now incorporated for the purpose of carrying on telegraphic communications (*n*), and lines of railway are

(*m*) By sect. 61, any person found committing any offence against this act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended without a warrant by any peace officer or the owner of the property injured, or his servant or any person authorized by him, and forthwith taken before some neighbouring justice of the peace to be dealt with according to law. See also 25 & 26 Vict. c. cxxxi. s. 62; and see *Kine v. Evershed*, 10 Q. B. 143; *Read v. Coker*, 13 C. B. 850; *Parrington v. Moore*, 2 Exch. 223; *Horn v. Thornborough*, 3 Exch. 846; *Jones v. Howell*, 29 L. J. (Exch.) 19. Persons found committing indictable offences at *night*, i. e. between nine and six, may be apprehended by anybody and delivered to a constable, 14 & 15 Vict. c. 19, s. 11. Injuries to telegraph wires

may be attended with such serious consequences that it seems a pity the offence was not made a felony so as to justify all persons in apprehending offenders in the day-time.

(*n*) 7 & 8 Vict. c. 85, s. 14, post, App. 21. As to how far and on whose application the Court of Chancery would interfere to restrain interference with the soil of a highway for the purpose of erecting telegraph posts, see *Attorney-General v. United Kingdom Electric Telegraph Co.*, 31 L. J. (Ch.) 329; 30 Beav. 287. See also *R. v. Same*, 31 L. J. (M. C.) 166. In *South-Eastern R. Co. v. European and American Electric Telegraph Co.*, 9 Exch. 363; 23 L. J. (Exch.) 113, it was held that the defendants had no power under their special act to go under the railway; or over it as they had done.

used by them usually under contracts made with the railway companies.

Obligation to permit Telegraphs to be constructed.

By "The United Kingdom Electric Telegraph Act, 1862," it is enacted:—

25 & 26 Vict.
c. cxxxi. s. 42.

Sect. 42. Subject to the provisions of this act, it shall be lawful for the company, by agreement with the owners, lessees and occupiers of any land, house or building, or with the proprietors or lessees of any railway, navigation, canal or navigable river, or the undertakers, directors, conservators, trustees, commissioners, or other persons interested in, or having the charge of such canal, navigation or river, or the tolls thereof, and according to the terms of such agreement, to lay, maintain, repair, and renew any posts, poles, standards, stays, struts or other apparatus for carrying, suspending or otherwise supporting such telegraphs in, upon, over, along, across or under such land, house, building, railway, navigation, canal or navigable river; but none of the powers or provisions of this act shall extend or apply to any railway, navigation, canal or navigable river, or any of the stations, towing-paths, lands, wharves, works or buildings belonging to or connected therewith respectively, except with the consent in writing of the company under their common seal, or of the person to whom the same respectively shall belong, or of such undertakers, directors, conservators, commissioners, or other persons as aforesaid, first had and obtained; but this provision shall not extend to prevent the company from laying telegraphs along, across, or over any street, although such street may cross or be crossed by a railway, navigation, canal or navigable river: Provided that such telegraphs do not in anywise damage, and are not calculated to damage the railway, navigation, canal or navigable river, or any of the works connected therewith, or interfere with any alteration or improvement thereof, and do not at all interrupt or interfere with, and are not calculated to interrupt or interfere with the use, alteration or improvement thereof, or the passage and conveyance of traffic along the same.

As to laying telegraphs

in, over, &c.,
lands, build-
ings, railways,
&c.

Sect. 43. No telegraph or any support, or work connected therewith, shall be so laid, placed or continued along any railway as to stop the access thereto for engines and carriages from any other railway forming a junction therewith, or along any navigation, canal, navigable river or dock, so as to stop up, prevent or otherwise interfere with the access thereto for vessels, barges or boats, whether with or without masts, from any other navigation, canal or navigable river, or any dock, basin or cut communicating therewith, or in any way impede the traffic passing to or from any such railway, or to or from any such navigation, canal, navigable river or dock, basin or cut.

Telegraphs and works not to be so placed as to impede traffic passing from one railway, &c., to another.

Sect. 43.

And by sect. 47. If any company, or persons being the proprietors or lessees of any railway, canal, navigable river, navigation, docks, basins, gas or waterworks, or any corporation, commissioners, board, undertakers, conservators, trustees or other body, who shall for the time being be entitled to make use of, or to execute, construct, maintain, alter or improve any works, or any waterway or other way or road, or other easement within or upon any house or other building, or land or street, or if any owner, lessee or occupier for the time being of any house or other building or land in, over or under which house or other building, or land or street, any tube, wire or other apparatus may pass shall state in writing to the company that it is necessary for the improvement or other use of, or for the execution, construction, maintenance, alteration or improvement of any work or water, or other way or road or easement, which any such owner, lessee or occupier, company, corporation, commissioners, board, undertakers, conservators, trustees or other body shall be entitled to make, execute, construct, maintain, alter, improve, or use within

Wires, &c., to be removed when they interfere with improvement, &c., of property.

Sect. 47.

*Obligation to
permit Telegraphs
to be constructed.*

or upon any such house or other building, or land or street, or for the use or enjoyment of any such work, water or other way, or road or easement as aforesaid, or for the objects or purposes of any such works, water or other way, or road or easement, that the tube, wire or other apparatus should be displaced, the company shall with all convenient speed, after any such notice, remove such tube, wire or other apparatus so far as such removal may be necessary to avoid interference with any such improvement or other use of, or the execution, construction, alteration, improvement or maintenance of any works, water or other way, or road or easement, which any such party may be entitled to make, or the use or enjoyment of the said works, water or other way, or road or easement, and the objects and purposes thereof, within or upon any such house or other building, or land or street (*o*).

There are similar provisions in "The Universal Private Telegraph Company's Act, 1861," 24 & 25 Vict. c. lxi. ss. 25, 26; and in "Bonelli's Electric Telegraph Act, 1861," 24 & 25 Vict. c. xcii. ss. 19, 20.

26 & 27 Vict.
c. 112, s. 6.

It may be well to remark in this place that, by "The Telegraph Act, 1863," any company authorized to construct and maintain telegraphs, may, subject to the restrictions and provisions of that act, place and maintain a telegraph and posts under, in, upon, over, along or across any land or building, or any railway (*p*) or canal, and may alter or remove the same. But—

Sect. 32.

"The company shall not place any work under, in, upon, or across any railway or canal, except with the consent of the proprietors or lessees, or of the directors or persons having the control thereof. But this provision shall not restrict the company from placing any work (subject and according to the other provisions of this act) under, in, upon, over, along or across any street or public road, although such street or public road may cross or be crossed by a railway or canal, or interfere with the use, alteration or improvement thereof."

IX. *Obligation to pay Duties and Tithe Commutation Rent-Charges.*

*Obligation to pay
duties on pas-
sengers.*

5 & 6 Vict. c. 79,
App. 15.

The duties payable in respect of railway passengers are levied under 5 & 6 Vict. c. 79, which, after repealing 2 & 3 Will. IV. c. 120, enacts, that there shall be paid in Great Britain for passengers conveyed upon any railway, "For and in respect of all passengers conveyed for hire upon or along any railway, a duty at and after the rate of 5*l.* for every 100*l.*, upon all sums received or charged for the hire, fare, or conveyance of all such passengers." This tax is payable by the company actually receiving the money from the public (*q*), but is not payable in respect of passengers conveyed in the third-class trains, travelling under the conditions imposed by 7 & 8 Vict. c. 85(*r*), commonly called parliamentary trains. And every company must

(*o*) Sect. 48 relates to agreements made before the passing of the act.

(*p*) "Railway" includes any station, work or building connected with a railway, see

sect. 3.

(*q*) *Attorney-General v. Oxford, W. and W. R. Co.*, 31 L. J. (Exch.) 218.

(*r*) Sect. 9, ante, 474.

keep a book open for the inspection of any authorized officer of the Commissioners of Inland Revenue, containing an account of the money received or charged daily for the fare of the passengers conveyed along the railway, and also an account of money paid or accounted for to other railway companies; and, within twenty days after the termination of every calendar month, a copy of such accounts during the whole of the calendar month last preceding must be delivered to the Commissioners of Inland Revenue (s), with an affidavit, to be taken before a justice of the peace, of the secretary, chief clerk, or accountant of the company, verifying such account; and at the time of delivering this account, the stamp duties chargeable in respect of the passengers conveyed, according to such account, (exclusive of money payable by other companies,) must be paid (t). Every company must also give a bond, with sufficient sureties, to be renewed as often as it shall become forfeited, or as the parties thereto shall die or become bankrupt or insolvent, or reside in parts beyond the seas, or whenever the said commissioners shall require it to be renewed, for the due performance of all matters required to be done by the above act; and, on default of such bond being given or renewed, 100*l.* for every day of such default is forfeited (u).

*Obligation to pay
Duties, &c.
and keep books.*

With respect to rent-charges, the 7 & 8 Vict. c. 85, provides, that, if a rent-charge, or part of a rent-charge, apportioned under the Tithe Commutation Act upon lands taken or purchased by a railway company, or upon any part thereof, becomes in arrear, the person entitled to the rent-charge may distrain to recover such arrears upon the effects of the company, whether on the land charged with such distress or not (x).

Tithe rent-charge.

The company are also required to pay land-tax and poor-rate in respect of lands, whilst the railway is in the course of construction (y).

*Land-tax and
poor-rates.*

X. *Obligation to make certain Returns.*

Every railway company must make such returns to the Board of Trade as they may direct of the aggregate traffic in passengers, in cattle, and goods; also of all accidents attended with personal injury; and also a table of all tolls on each class passengers, and on cattle and goods conveyed on the railway; and if such returns are not delivered within thirty days after they are required, a penalty of 20*l.* a day during such neglect is incurred (z); and every officer of a company wilfully making a false return is guilty of a misdemeanor.

*Obligation to
make certain re-
turns.*

*3 & 4 Vict. c. 97,
s. 3, App. 7.*

Sect. 4.

(s) 26 & 27 Vict. c. 33, s. 13.

(t) 5 & 6 Vict. c. 79, ss. 4, 5, post, App.

15. (u) Ibid. s. 7.

(x) 7 & 8 Vict. c. 85, s. 22, post, App.

23. Where titheable lands were taken, and

the tithe owner was held not to be entitled to compensation, see ante, 215.

(y) 8 & 9 Vict. c. 18, s. 133, post, App. 70. As to rating of railways, see post.

(z) See further on this subject, ante, 447.

*Obligation to
make certain
Returns.*

5 & 6 Vict. c. 55,
s. 7, App. 11.

Within forty-eight hours after the occurrence of an accident, attended with serious personal injury to the public using a railway, the company are required to give notice thereof to the Board of Trade, under a penalty of 5*l.* for every day during neglect to give notice.

Sect. 8.

The Board of Trade are also empowered to order any railway company to make a return of serious accidents occurring in the course of public traffic on a railway, whether attended with personal injury or not, in such form as they may require; and a like penalty of 5*l.* a day is incurred for neglect in making the return (*a*).

7 & 8 Vict. c. 85,
s. 5, App. 19.

By the statute which enables the Lords Commissioners of her Majesty's Treasury to revise the scale of tolls or purchase certain railways at the end of twenty-one years after the date of their acts of incorporation, the directors of such companies are required, during the last three years of the said term, to keep certain accounts (*b*).

8 & 9 Vict. c. 20,
s. 107, App. 93.

And, by the Railways Clauses Consolidation Act, railway companies subject to that act are required to send an annual account of their total receipts and expenditure of all funds levied by them, with a statement of the balance of such account, duly audited; and shall, if required, transmit a copy of such account to the clerks of the peace, and also to the overseers of the poor of the parishes through which the railway passes.

XI. *Regulations as to Matters of Police.*

*Obstructing persons
setting out
railway.*

8 & 9 Vict. c. 20,
s. 24, App. 79.

Any person wilfully obstructing any person setting out the line of railway, or pulling up stakes or marks showing the line, is liable to a penalty of 5*l.*

*Power to apprehend
drunken
servants, &c.*

5 & 6 Vict. c. 55,
s. 17, App. 14.

Any officer or agent of a railway company, or any special constable duly appointed, and all such persons as they may call to their assistance, may seize and detain any engine driver, waggon driver, guard, porter, servant, or other person employed by the said or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the railway, or who shall commit any offence against any of the bye-laws, rules, or regulations of the company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway, or the works thereof, shall or might be injured or endangered, or whereby the passage of any of the engines, carriages or trains shall be or might be obstructed or

(*a*) See further on this subject, ante, 447. (*b*) And see ante, 476.

impeded, and to convey such offender, or any person counselling, aiding or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence was committed (*c*), without any other warrant or authority than that act (5 & 6 Vict. c. 55); and every person so offending, and every person counselling, aiding or assisting therein as aforesaid, when convicted before such justice as aforesaid, is liable to two months' imprisonment, with or without hard labour, or to pay a fine of 10*l.* (*d*), or the justice may commit the person so charged for trial to the quarter sessions, and, on conviction, he may be imprisoned for any term not exceeding two years, with or without hard labour (*e*). Regulations as to Matters of Police.
Sect. 14.

And whosoever, by any unlawful act or by any wilful omission or neglect, shall obstruct or cause to be obstructed, any engine or carriage using any railway, or shall aid or assist therein, shall be guilty of a *misdemeanor*, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour (*f*). Doing or omitting anything to obstruct engine or carriages;

Moreover, whosoever by any unlawful act or by any wilful omission or neglect, shall endanger or cause to be endangered the safety of any person conveyed or being in or upon a railway, or shall aid or assist therein, shall be guilty of a *misdemeanor*, and being convicted thereof shall be liable, at the discretion of the court, to similar punishment (*g*). or endanger passengers.

And whosoever shall unlawfully and maliciously put, place, cast or throw upon or across any railway, any wood, stone, or other matter Placing wood, &c. on railway with intent to obstruct

(*c*) If the offence is committed in Scotland, see 5 & 6 Vict. c. 55, s. 18, post, App. 14.

(*d*) 5 & 6 Vict. c. 55, s. 17, post, App. 14, extending 3 & 4 Vict. c. 97, s. 13, post, App. 9.

(*e*) Parties charged with offences under 5 & 6 Vict. c. 55, s. 17, may also be tried at the sessions. See 5 & 6 Vict. c. 55, s. 2, post, App. 10.

(*f*) 24 & 25 Vict. c. 97, s. 36. See *infra*, note (*g*).

(*g*) 24 & 25 Vict. c. 100, s. 34. This and 24 & 25 Vict. c. 97, s. 36, neither of which apply to Scotland, are taken from 3 & 4 Vict. c. 97, s. 15, which was repealed by 24 & 25 Vict. c. 95. The words of that act are "*wilfully* do or cause to be done anything in such a manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed in or upon the same." The above acts are more extensive. In *R. v. Holroyd*, 2 M. & Rob. 339, upon an indictment under 3 & 4 Vict. c. 97, s. 15, it appeared that large quantities of earth and rubbish were found placed across the railway, and the prosecutors' case was, that this had been done by the defendant wilfully and in order to obstruct the use of the railway;

whilst the defendant's case was that the earth, &c. had been accidentally dropped on the railway: *Maule, J.*, told the jury, that if the rubbish had been dropped on the rails by mere accident, the defendant was not guilty, but it was by no means necessary, in order to bring the case within the act, that the defendant should have thrown the rubbish on the rails expressly with the view to upset the train of carriages. If the defendant designedly placed these substances having a tendency to produce an obstruction, not caring whether they actually impeded the carriages or not, that was a case within the act. And on the jury asking what was the meaning of the term "*wilfully*" used in the statute, *Maule, J.*, added, "he should consider the act to have been wilfully done, if the defendant intentionally placed the rubbish on the line, knowing that it was a substance likely to produce an obstruction; if for instance he had done so in order to throw upon the company's officers the necessary trouble of removing the rubbish." This decision throws light on the meaning of "*wilful*" in the above section. And see *R. v. Bradford*, 29 L. J. (M. C.) 171, and note (*k*), post.

Regulations as to
Matters of
Police.

or overthrow en-
gine, &c.;

or thing, or shall unlawfully and maliciously take up, remove or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, *with intent* in any of the cases aforesaid, to obstruct, upset, overthrow, injure or destroy any engine, tender, carriage or truck using such railway, shall be guilty of *felony*, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than [five (*g*)] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen, with or without whipping (*h*).

or endanger
passengers.

Moreover, whosoever shall do any of the acts lastly mentioned, "with intent to endanger the safety of any person travelling or being upon such railway," is guilty of *felony*, and liable to similar punishment (*i*).

Throwing stones,
&c., upon a rail-
way carriage with
intent to injure
passengers.

And whosoever shall unlawfully and maliciously throw, or cause to fall or strike at, against, into or upon any engine, tender, carriage or truck used upon any railway, any wood, stone or other matter or thing, *with intent* to injure or endanger the safety of any person being in or upon such engine, tender, carriage or truck, or in or upon any other engine, tender, carriage or truck of any train of which such first-mentioned engine, tender, carriage or truck shall form part, shall be guilty of *felony*, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than [five (*g*)] years, or to be imprisoned for any term not exceeding two years, with or without hard labour (*k*).

Setting fire to
railway station.

And whosoever shall unlawfully and maliciously set fire to any station, engine-house, warehouse or other building belonging or appertaining to any railway, shall be guilty of *felony*, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than [five (*g*)] years, or

(*g*) 27 & 28 Vict. c. 47, s. 2.

(*h*) 24 & 25 Vict. c. 97, s. 35. See *infra*, note (*i*).

(*i*) 24 & 25 Vict. c. 100, s. 32. This clause and 24 & 25 Vict. c. 97, s. 35, are taken from 14 & 15 Vict. c. 19, s. 6 (which was repealed by 24 & 25 Vict. c. 95), and "unlawfully" substituted for "wilfully." As to "hard labour" and "whipping," see sects. 74 and 75. This act does not extend to Scotland, see sect. 78.

(*k*) 24 & 25 Vict. c. 100, s. 33. It is remarkable that this section, which provides for the punishment of an offence which boys are probably more likely to

commit than anybody else, and for whom whipping would perhaps be the most suitable punishment, does *not* authorize whipping, like the preceding section. The clause is taken from 14 & 15 Vict. c. 19, s. 7 (which was repealed by 24 & 25 Vict. c. 95), and the word "unlawfully" substituted for "wilfully." In *R. v. Owen* (Northampton Spring Assizes, 1863), coram Pollock, C. B., two boys were indicted and convicted under 24 & 25 Vict. c. 100, s. 34, ante, 483, for dropping stones off a bridge on to a passing train. The company being unwilling to make boys *felons* for such an act.

to be imprisoned for any term not exceeding two years, with or without hard labour, and if a male under the age of sixteen years, with or without whipping (*l*). *Regulations as to Matters of Police.*

And whosoever shall unlawfully and maliciously pull or throw down or in anywise destroy any bridge (whether over any stream of water or not), or any viaduct or aqueduct, over or under which bridge, viaduct or aqueduct any highway, railway or canal shall pass, or do any injury with intent, and so as thereby to render such bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof, dangerous or impassable, shall be guilty of *felony*, and being convicted thereof shall be liable, at the discretion of the court, to similar punishment (*m*). *Injuries to bridges and viaducts.*

It is also enacted, that if any person shall wilfully obstruct or impede any officer or agent of any railway company in the execution of his duty upon any railway, or upon or in any of the stations, or other works or premises connected therewith; or if any person shall wilfully trespass (*n*) upon any railway, or any of the stations, or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer or agent of the company; every such offender, and all others aiding or assisting therein, may be seized and detained by any such officer or agent, or any person whom he may call to his assistance, until such offender can be conveniently taken before some justice of the peace for the county or place wherein such offence was committed, who may inflict a fine of 5*l.* on the offender, and, in default of payment, imprison him for two months, if the fine be not in the meantime paid (*o*). Proceedings cannot be quashed for want of form, or be removed by certiorari (*p*). *Obstructing officers.*
Or trespassing on railway.

And the Companies Clauses Consolidation Act enacts, that it shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of that or the special act, or any act incorporated therewith, and whose home and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any other warrant and authority than that and the special act; and such justice shall proceed, with all convenient despatch, to the hearing and determining of the complaint against such offender (*q*). *Transient offenders.*

So, by the Railways Clauses Consolidation Act, all officers and servants, and other persons on behalf of the company, and all constables, gaolers, and peace officers, may lawfully apprehend and detain *Persons not paying their fare, &c.*

(*l*) 24 & 25 Vict. c. 97, s. 4, and see *supra*, 484, note (*i*); ss. 11 and 12, apply to injuries by rioters.

(*m*) *Id.* s. 33.

(*n*) See *Manning v. Eastern Counties R. Co.*, 12 M. & W. 237.

(*o*) 3 & 4 Vict. c. 97, s. 16, post, App. 9.

(*p*) *Id.* s. 17.

(*q*) 8 & 9 Vict. c. 16, s. 156, post, App. 43. See also a similar clause in 8 & 9 Vict. c. 20, s. 154, post, App. 100.

*Regulations as to
Matters of
Police.*

any person who shall travel, or attempt to travel, without having paid his fare (*r*), and with intent to avoid payment, or who shall knowingly and wilfully proceed beyond his distance, with intent to avoid payment of the additional fare, or who shall knowingly and wilfully refuse or neglect to quit the carriage on arriving at the point to which he has paid his fare (*s*). The penalty for these offences is forty shillings.

Forging pass.

The forgery of a railway pass is an offence at common law, but the mere uttering it is no offence, unless some fraud was actually perpetrated (*t*).

*Obtaining ticket
by false pre-
tences.*

And if a person by false pretence obtain a railway ticket from the company, which enables him to travel on the railway, this is an offence within 24 & 25 Vict. c. 96, s. 88, for which an indictment for obtaining a chattel by false pretences will lie (*u*). If

Stealing ticket.

such a ticket be fraudulently taken it is felony, although the ticket would have been delivered up at the end of the journey (*x*).

XII. *Regulations as to Bye-Laws.*

*Bye-laws affect-
ing the public.*

The jurisdiction of the Board of Trade in respect of bye-laws has been already considered (*y*).

By the Railways Clauses Consolidation Act (*z*), it is enacted, that a railway company may from time to time make regulations for the following purposes:—

For regulating the mode by which, and the speed at which, carriages using the railway are to be moved or propelled;

For regulating the times of the arrival and departure of any such carriages;

For regulating the loading and unloading of such carriages, and the weights which they are respectively to carry;

For regulating the receipt and delivery of goods, and other things which are to be conveyed upon such carriages;

For preventing the smoking of tobacco, and the commission of any other nuisance, in or upon such carriages, or in any of the stations or premises occupied by the company;

And, generally, for regulating the travelling upon, or using and working of the railway (*a*).

(*r*) A passenger could not be convicted under this section for riding a shorter distance along the railway than that for which he has paid his fare, and so evading the payment of a larger fare for a short distance, than is charged for a long one. *R. v. Frere*, 4 E. & B. 598.

(*s*) 8 & 9 Vict. c. 20, ss. 103, 104, post, App. 93.

(*t*) *R. v. Boulton*, 2 C. & K. 604.

(*u*) *R. v. Boulton*, 2 C. & K. 917; 19 L. J. (M. C.) 67; 3 Cox, Cr. Cas. 576;

3 Jur. 1034. This case arose on 7 & 8 Geo. 4, c. 29, s. 53.

(*x*) *R. v. Beecham*, 5 Cox, Cr. Cas. 156.

(*y*) Ante, 443. See also the model code usually adopted, ante, 444.

(*z*) 8 & 9 Vict. c. 20, s. 108, post, App. 94.

(*a*) Whether the company may by any bye-law limit their liabilities as common carriers, see post, 488. As to the power to make bye-laws for other purposes than those specified, see *Child v. Hudson's Bay Co.*, 2 P. Wms. 209.

Bye-laws.

And, for better enforcing the observance of such regulations, the company may, subject to 3 & 4 Vict. c. 97 (*b*), make bye-laws, and, from time to time, repeal or alter them; such bye-laws must be reduced into writing, and have the common seal of the company affixed, and, as we have seen, must be approved by the Board of Trade. Any person offending against a bye-law is liable to a penalty (*c*); and if the infraction of the bye-law is attended with danger and annoyance to the public, or hindrance to the company, they may interfere summarily to obviate the danger, &c. (*d*). The substance of such bye-laws must be printed, and kept affixed on the front, or other conspicuous part of every wharf or station belonging to the company, otherwise a penalty may not be enforced (*e*). The company are justified in acting upon such bye-laws, and provision is made for proving their publication (*f*).

It is remarkable, however, that the Railways Clauses Act contains no provision analogous to sect. 127 of the Companies Clauses Act, as to proof of the bye-laws themselves, in case of prosecutions for offences against them. It has, however, been decided by the Court of Common Pleas (*g*), that bye-laws made pursuant to the Railways Clauses Act are documents of a public nature and proveable as such, i. e. by an examined and certified copy.

The company may also, under the Companies Clauses Act, make bye-laws, for regulating the conduct of their officers and servants, and for providing for the due management of the affairs of the company, and alter and repeal the same; such bye-laws must be authenticated by the seal of the company, and a copy given to every officer and servant affected thereby (*h*). A penalty, not exceeding 5*l.* for each offence, may, by such bye-laws, be imposed upon all persons being officers and servants of the company (*i*). But so that a justice

Affecting servants
of the company.

(*b*) Post, App. 7.

(*c*) These penalties are recoverable by summary proceeding before two justices, 8 & 9 Vict. c. 20, s. 145, post, App. 98. The breach of a bye-law does not seem to be an offence against sect. 154, which will justify the detention of the party, unless the bye-law relates to any of the matters enumerated in ss. 103, 104, in which cases express authority is given to apprehend and detain an offender. In *Chilton v. London and Croydon R. Co.*, 16 M. & W. 212; 5 Railw. C. 4; 16 L. J. (Exch.) 89, it was decided under a special act, that the company's servants were not justified in taking the plaintiff before a justice for a breach of a bye-law, which ordered a passenger, who failed to produce his ticket, to pay a fare from the place where the train originally started. Whether such a bye-law is good, *quære*.

(*d*) 8 & 9 Vict. c. 20, s. 109, post, App. 94.

(*e*) Id. s. 110. That is, bye-laws affect-

ing a wharf must be published at the wharf, and bye-laws affecting a station must be published at the station. *Motteram v. Eastern Counties R. Co.*, 29 L. J. (M. C.) 57, where it was held that a man might be convicted for breach of a bye-law, on proof of publication at the two stations at which he embarked and disembarked, and that it was not necessary to prove publication at every station. *Williams, J., diss.*

(*f*) 8 & 9 Vict. c. 20, s. 111, post, App. 94. And see 8 & 9 Vict. c. 113, s. 1, post, App. 103.

(*g*) *Motteram v. Eastern Counties R. Co.*, *ubi supra*.

(*h*) 8 & 9 Vict. c. 16, s. 124, post, App. 39.

(*i*) Id. s. 125. Bye-laws inflicting penalties on persons other than officers or servants of the company, must be approved of and allowed by the Board of Trade, see ante, 443; and must be published, see ante, note (*e*). But such allowance would not preclude an inquiry into the validity of such bye-laws. *R. v. Wood*, 5 E. & B. 49.

Bye-laws.

may order a part only of the penalty to be paid (*k*). A copy of bye-laws, with the common seal of the company affixed, is sufficient evidence of bye-laws (*l*).

The power of railway companies to make bye-laws is regulated by the above acts of Parliament, and sometimes by their special act. As a general principle, all bye-laws in restraint of trade must be reasonable and beneficial to the public, or they cannot be supported (*m*). Where, by a local act, the proprietors of a public navigation were empowered to make bye-laws for the good government of the company, and for the good and orderly using of the navigation, and also for the well governing of the bargemen, watermen, and boatmen, who should carry any goods upon any part of the navigation, and to impose such reasonable fines upon all persons offending against the same, as to the company should seem meet; and the company made a bye-law that the navigation should be closed every Sunday throughout the year, and that no business should be transacted thereon during that time (works of necessity only excepted), nor should any person during such time navigate any boat, &c., it was decided, that such bye-law was illegal and void, and not authorized by the statute (*n*).

It has been doubted, whether a bye-law, which required a passenger who failed to produce his ticket to pay the fare from the place whence the train originally started, is valid (*o*).

And a bye-law, which provided that "every first-class passenger will be allowed 112 lbs., and every second-class passenger 56 lbs. of luggage free of charge, but the company will not be responsible for the care of the same, unless booked and paid for accordingly," was held not to exempt the company from responsibility for the loss of a passenger's luggage (within the weight allowed), which had been delivered to one of its servants, though not booked and paid for; in the absence of evidence that the company had provided means for booking luggage (*p*). And in a subsequent case (*q*), the same bye-law was held void, as being in contravention of the company's special act, which enacted, "that without extra charge it should be lawful for every passenger travelling upon the railway to take with him articles of clothing not exceeding 40 lbs. in weight, and four cubic feet in dimensions, and that the company shall in no case be respon-

Bye-laws exempting company from responsibility for passengers' luggage void.

Great Western R. Co. v. Goodman.

Williams v. Great Western R. Co.

(*k*) 8 & 9 Vict. c. 16, s. 126, post, App. 40.

(*l*) Id. s. 127. And the seal need not be proved; see 8 & 9 Vict. c. 113, s. 1, post, App. 103.

(*m*) *Gunmakers' Co. v. Fell*, Willes, 389; *Bosworth v. Herne*, Cas. temp. Hardw. 405.

(*n*) *Calder and Hebble Navigation Co. v. Pilling*, 14 M. & W. 76; and see *Elwood v. Bullock*, 6 Q. B. 383. As to how far bye-laws are divisible, see *R. v. Lundie*, 31 L. J. (M. C.) 157.

(*o*) *Chilton v. London and Croydon R. Co.*, 16 M. & W. 212; 5 Railw. C. 4.

(*p*) *Great Western R. Co. v. Goodman*, 12 C. B. 313.

(*q*) *Williams v. Great Western R. Co.*, 10 Exch. 15. In *Motteram v. Eastern Counties R. Co.*, 29 L. J. (M. C.) 57, a passenger was convicted under a bye-law, which prohibited quitting a carriage whilst the train was in motion.

sible for any things whatsoever carried upon the railway with any passenger other than such passenger's articles of clothing, not exceeding the weight and dimensions aforesaid: Provided that nothing herein contained shall extend to make liable the company further than where, according to law, stage-coach proprietors and common carriers would be liable."

Bye-laws.

Where a bye-law subjected to a penalty any passenger who should enter a carriage without having paid his fare; and the fare from C. to N. was 5s., and 7s. from C. to D. (an intermediate station between C. and N.), and a person took a ticket from C. to N. but got out at D., and refused to pay the 2s. difference; it was held that he could not be convicted under the bye-law (*r*).

Penalty on entering a carriage without having paid fare.
R. v. Frere.

By the Railways Clauses Act, 1863 (*s*), railway companies authorized to maintain steam vessels are empowered to make bye-laws for regulating them, in the same manner as with respect to railways.

(*r*) *R. v. Frere*, 4 E. & B. 598.

(*s*) 26 & 27 Vict. c. 92, s. 32, post, App.

CHAPTER XI.

ARBITRATION BETWEEN RAILWAY COMPANIES.

Railway Companies Arbitration Act, 1859.

22 & 23 Vict.
c. 52, App.

AN important act of Parliament was passed in 1859, for the better providing for the settlement by arbitration of matters in which railway companies in the United Kingdom are mutually interested. It is called "The Railway Companies Arbitration Act, 1859" (*a*). By the 2nd section of that act it is enacted, that any two or more railway companies, in the act called "The Companies," from time to time by writing under their common seals may agree to refer, and may refer to arbitration, any existing or future differences, questions or other matters whatsoever in which they are mutually interested, and which they might lawfully settle or dispose of by agreement between themselves, and may delegate to the persons to whom the reference is made any power to determine the terms of any contract to be made between the companies, which the directors might lawfully delegate to any committee of themselves respectively. The companies jointly, but not otherwise, from time to time by writing under their common seals may add to, alter or revoke any agreement of reference, or any of the terms, &c. thereof (*b*). Such references are declared to be binding (*c*). Where the companies agree, the reference shall be made to a single arbitrator (*d*), otherwise, where there are two companies, the reference must be to two arbitrators, and where there are three or more companies, to as many arbitrators as there are companies (*e*). Where there are two or more arbitrators, each company shall by writing under their common seal appoint one, and give notice to the other companies (*f*); and if they fail to appoint an arbitrator within fourteen days, the Board of Trade may appoint one (*g*). The act then provides for the appointment of arbitrators by companies (*h*), and the Board of Trade (*i*) to supply vacancies, and declares the appointment of an arbitrator not to be revocable (*k*). Provision is then made for the appointment of an

Umpire.

(*a*) By sects. 72 and 73 of the "Companies Act, 1862," 25 & 26 Vict. c. 89, post, App., companies under that act may refer questions to arbitration in accordance with "The Railway Companies Arbitration Act, 1859."

(*b*) 22 & 23 Vict. c. 52, s. 3, post, App.

(*c*) Sect. 4, *ibid*.

(*d*) Sect. 5, post, App.

(*e*) Sect. 6, *ibid*.

(*f*) Sect. 7, *ibid*.

(*g*) Sect. 8, *ibid*.

(*h*) Sect. 9, *ibid*.

(*i*) Sect. 10, *ibid*.

(*k*) Sect. 11, *ibid*.

Railway Companies Arbitration Act, 1859.

umpire, and for the supply of any vacancy caused by his death, &c. (*l*), and it is enacted that where there are two or more arbitrators, if they do not, within such a time as the companies agree on, or failing such agreement within thirty days after the reference, agree on their award, the matters shall stand referred to the umpire (*m*). Power is given to the arbitrators and umpire to call for books and documents, and to administer an oath to witnesses (*n*). Unless otherwise agreed by the companies, the arbitrators may proceed as they think fit (*o*), and even in the absence of the other companies, after notice (*p*). Several awards may be made (*q*), and if made in due time will bind all parties (*r*). Power is given to the umpire to extend the period for making his award (*s*); and it is provided that no award shall be set for irregularity or informality (*t*), but the award is to be binding on the parties (*u*), and full effect given to it by the superior courts (*x*). Except where it is otherwise agreed, costs are to be in the discretion of the arbitrator (*y*), and if the award does not otherwise determine, the costs of the arbitration and award are to be borne by the companies in equal shares, and in other respects the companies are to bear their own costs (*z*). Lastly, provision is made for making the submission a rule of court, and power is given to the court to remit the matter to the arbitrator (*a*). Costs.

(*l*) Sects. 12—16, post, App.

(*m*) Sect. 17, *ibid.*

(*n*) Sect. 18, *ibid.*

(*o*) Sect. 19, *ibid.*

(*p*) Sect. 20, *ibid.*

(*q*) Sect. 21, *ibid.*

(*r*) Sect. 22, *ibid.*

(*s*) Sect. 23, post, App.

(*t*) Sect. 24, *ibid.*

(*u*) Sect. 25, *ibid.*

(*x*) Sect. 26, *ibid.*

(*y*) Sect. 27, *ibid.*

(*z*) Sect. 28, *ibid.*

(*a*) Sect. 29, *ibid.*

CHAPTER XII.

AMALGAMATION OF RAILWAY COMPANIES, AND WORKING
AGREEMENTS BETWEEN COMPANIES.

Notices required
previous to appli-
cation to Parlia-
ment for amalga-
mation.

Further require-
ments of Stand-
ing Orders.

Amalgamation.—We have already considered the notices required to be given when it is intended to apply to Parliament for powers to amalgamate with another company (*a*).

We have also seen that it is provided by the Standing Orders (*b*), that no powers of amalgamation shall be contained in any bill for the *construction* of a railway; and that no such powers shall be given to any railway company with reference to any other undertaking already authorized by any act or acts, nor to any other incorporated company with reference to any railway, unless, previously to the application to Parliament for such purpose, the several companies who may be parties to such amalgamation shall have proved certain matters to the satisfaction of the Board of Trade; and in case such powers are applied for in respect of works intended to be authorized by a bill of the same session, certain other matters must be proved to the satisfaction of the Board of Trade; and that *no* such powers shall be given in respect of works intended to be authorized by any act for which it is intended to apply in any *subsequent* session (*c*). It is also provided, that in bills for the amalgamation of railway companies the amount of capital created by such amalgamation shall in no case exceed the sum of the capitals of the companies so amalgamated (*d*).

We have also considered how far the Court of Chancery will enforce the performance of agreements for amalgamation (*e*).

Rights and lia-
bilities of amal-
gamated com-
pany.

The legal rights and liabilities of the amalgamated company depend in a great measure upon the powers, &c. conferred upon them by their act for amalgamation. The question, how far an amalgamated company was bound by a covenant entered into with a private landholder by one of the companies previous to amalgamation, has been discussed in the House of Lords, in a case which has been already referred to (*f*), and in which it was decided that the company *was* bound. It has also been held in the House of Lords, that costs can-

(*a*) Ante, 10.

(*b*) C. S. O. 154, ante, 25.

(*c*) C. S. O. 156, ante, 25.

(*d*) C. S. O. 158, ante, 26.

(*e*) Ante, 74.

(*f*) *Edinburgh and Glasgow R. Co. v. Campbell*, 9 L. T. (N. S.) 157, ante, 54. And as to the effect of amalgamation on fidelity bonds given previously, see ante, 83, note (*k*).

not be recovered against a shareholder in a company which has been unlawfully amalgamated with another company (*g*). *Amalgamation of Companies.*

With regard to tolls, it is provided by the Railways Clauses Act, 1845 (*h*), that, when railways are amalgamated, tolls are to be calculated at such rates as if such amalgamated railways had originally formed one line of railway. Tolls.

It remains, therefore, only to call the attention of the reader to the provisions of the Railways Clauses Act, 1863, with respect to amalgamation, which apply where two or more railway companies, respectively incorporated either before or after 28th July, 1863, are amalgamated by a special act passed after that date, and incorporating Part V. of that act. Provisions of Railways Clauses Act, 1863, as to amalgamation.
26 & 27 Vict.
c. 92, Part V.
Sect. 36, App.

Companies are deemed amalgamated by a special act:—

Sect. 37.

- (1.) Where by the special act two or more companies are dissolved, and the members thereof respectively are united into and incorporated as a new company:
- (2.) Where by the special act a company or companies is or are dissolved, and the undertaking or undertakings of the dissolved company or companies is or are transferred to another existing company, with or without a change in the name of that company.

It is not thought necessary to incumber this part of the work with a statement of these provisions, which are printed at length in the Appendix, and to which the reader is referred.

Working Agreements.]—By the Railways Clauses Act, 1863, certain restrictions were placed on working agreements between companies. Thus, where two or more companies (*i*) are authorized by a special act, passed after 28th July, 1863, and incorporating Part III. of the Railways Clauses Act, 1863, to agree (*j*) among themselves with respect to all or any of the following purposes, namely:— Working agreements.
26 & 27 Vict.
c. 92, Part III.
Sect. 22, App.

The maintenance and management of the railways of the companies respectively, or any one or more of them, or any part thereof respectively, and of the works connected therewith respectively, or any of them;

The use and working of the railways or railway, or of any part thereof, and the conveyance of traffic thereon;

The fixing, collecting and apportionment of the tolls, rates, charges, receipts and revenues levied, taken or arising in respect of traffic.

(*g*) *Midland Great Western R. Co., Ireland v. Leach*, 3 H. L. C. 872; and see this case as to what is an informal exercise of a power to amalgamate.

(*h*) 8 & 9 Vict. c. 20, s. 91, post, App. 92.

(*i*) By sect. 28, these provisions with respect to companies are made applicable to the case of a company authorized to agree with an individual proprietor of a railway.

(*j*) By sect. 29, any alteration of an agreement shall be deemed an agreement.

*Working
Agreements.*26 & 27 Vict.
c. 92, s. 24.Public notice of
intention to enter
into working
agreement.

Before the companies enter into the agreement, notice of their intention to do so must be given by them, or one of them, in a form to be approved by the Board of Trade, inserted once at least in each of three successive weeks in some newspaper published or circulating in the county prescribed in the special act, and if no county is prescribed, then in the county, or one of the counties, in which each railway, to the maintenance, management, use or working whereof the proposed agreement relates, or some portion of the railway is situate; and the notice must set forth within what time and in what manner any company or person aggrieved by the proposed agreement, and desiring to object thereto, may bring the objection before the Board of Trade.

Sect. 23.

When made, the agreement will not, save so far as authorized by the Railways Clauses Acts of 1845, or some other general statute or law in force with respect to the companies parties to the agreement, have any operation unless and until it is sanctioned at a general meeting, to be convened as prescribed by the act, by three-fifths of the shareholders entitled to vote; and it will have no operation until approved by the Board of Trade; nor will it affect the tolls, &c. which the companies are authorized to demand and receive from any person or company, but all such persons and companies will, notwithstanding the agreement, be entitled to the use and benefit of the railways of the companies parties to the agreement, on the same terms and on payment of the same tolls, &c. as they would be if the agreement had not been entered into.

Sect. 25.

Sect. 22.

Joint committee
for purposes of
agreements.

For the purposes of the agreement, the companies parties to it may appoint a joint committee, composed of such number of the directors of each company as the companies think proper, and may delegate to such committee such of the powers of the companies as they think necessary.

Modification of
agreements by
Board of Trade.
Sect. 27.

At the expiration of the first and every subsequent period of ten years, the agreement may be revised and modified by the Board of Trade.

27 & 28 Vict.
c. 120, App.Certificate from
Board of Trade
authorizing
working agree-
ment.

By "The Railway Companies Powers Act, 1864," certain facilities were given to companies desirous of entering into an agreement with respect to each of the matters above mentioned (*k*), and *also* with respect to

The *joint* ownership, maintenance, management and use of a station or other work, or the *separate* ownership, &c. of several parts of a station or other work.

By that act, in any such case, a company may, upon complying with the requisites of the act, obtain from the Board of Trade a certificate

(*k*) Supra, 493, Working Agreements. See also ante, 434.

which has the same force and operation as a special act of Parliament. But any railway or canal company (*l*) desirous of opposing the application for a certificate may effectually stop proceedings before the Board of Trade by lodging at the office of the Board a notice of opposition, in which case all further proceedings before the Board of Trade must cease, and further proceedings be taken in Parliament.

*Certificate from
Board of Trade.*

The mode of proceeding to obtain or oppose such a certificate is laid down minutely in the act of Parliament and certain general rules (*m*) contained in the schedule to the act, to which, as they are printed at length in the Appendix, the reader is referred.

The Board of Trade may also (under "The Railways Construction Facilities Act, 1864,"), on a joint application, or on two or more separate applications, issue a certificate empowering two or more companies or persons respectively to jointly make or execute the whole, or to separately make or execute parts of a work connected with or for the purposes of a railway, and to jointly or separately use the whole or parts thereof; and all the provisions of that act which relate to the making of a railway, or the making or executing of a work, shall extend and apply to the making or executing of the whole and the separate parts of such work as last aforesaid. The form of the certificate may be adapted to the circumstances of the case.

Authorizing joint
execution of
works.

27 & 28 Vict.
c. 121, s. 55,
App.

(*l*) There is no provision in the act for opposition by *individuals*.

(*m*) These rules may from time to time be amended by the Board of Trade, sect. 35.

PART II.

THE RIGHTS AND LIABILITIES OF RAILWAY COMPANIES, AS
CARRIERS OF GOODS AND PASSENGERS.

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I. *Railway Companies considered as Carriers of Goods and Passengers.*

A RAILWAY company, as we have seen, is required to permit carriages, properly constructed (*a*), to pass on the railway on payment of the tolls authorized by the special act, or the company may themselves provide steam power and carriages, for the purpose of conveying passengers and goods, for which they may make such reasonable charges as they may determine upon, not exceeding the charges by the special act authorized to be taken (*b*).

The company considered as carriers of goods and passengers.

The Railways Clauses Consolidation Act contains the following provisions on this subject:—

8 & 9 Vict. c. 20, s. 86, App. 91.

The company are authorized to use locomotive engines, or other moving power, and carriages drawn thereby, and to carry passengers

(*a*) See ante, 467.

(*b*) Each special act must be referred to for the purpose of ascertaining the tolls and charges which a company may take; and it will be seen, that the provisions contained in these acts are very variable. The following statement, extracted from Mr. Bigg's Collection of Special Railway Acts, passed 8 & 9 Vict. (1845), shows the variation in the maximum charges authorized by the special acts of that session (p. xxvii, *Introd.*):—

	Lowest Maximum Charge.	Highest Maximum Charge.
ANIMALS, per mile		
Horses	3d.	6d.
Sheep	0¼d.	2½d.
Carriages	4d.	10d.
GOODS, per ton per mile		
Coals	1d.	4d.
Corn	1½d.	6d.
General Merchandize	2¼d.	6d.
PASSENGERS, per mile		
First Class	2d.	4d.
Second Class	1½d.	3d.
Third Class	1d.	2½d.

*The Company
considered as
Carriers of Goods
and Passengers.*

8 & 9 Vict. c. 20,
s. 86, App. 91.

Powers to vary
tolls.

Sect. 90.

Tolls to be
charged equally.

and goods, at reasonable charges (c), not exceeding the tolls by the special act authorized, or they may contract with any other railway company for the passage along their railway of carriages, &c. belonging to such other company, or *vice versâ*, and for such purposes may enter into any contract, for the division or apportionment of the tolls (d) (Sect. 87); but no such contract shall alter any tolls which the parties to such contract shall be entitled to receive from any person or any other company; but all other persons and companies shall, notwithstanding the contract, be entitled to use the railway, as if no such contract had been entered into: (Sect. 88.) The company may not be charged or made liable further or in any other case than where stage-coach proprietors and common carriers would be liable, and are entitled to the benefit of every protection and privilege which stage-coach proprietors and common carriers enjoy: (Sect. 89) (e).

By sect. 90, after reciting that it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular parties, it is enacted, that it shall be lawful, therefore, for the company, subject to the provisions and limitations therein and in the special act contained, from time to time, to alter or vary the tolls (f) by the special act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit: Provided that all such tolls be at all times charged *equally to all persons* (g), and after the same rate, whether per ton per mile

For the construction of words inserted in tariffs of tolls, see *R. v. Leicestershire and Northampton Union Canal Co.*, 3 Railw. C. 1, and the cases mentioned, *infra*, note (g). Any ambiguity in a clause imposing tolls is to be construed in favour of the public. *Stockton and Darlington R. Co. v. Barrett*, 7 Man. & G. 870. The company are liable to be rated to the land-tax in respect of their tolls. *Vauxhall Bridge Co. v. Sawyer*, 6 Exch. 504; 20 L. J. (Exch.) 304; *Charing Cross Bridge Co. v. Mitchell*, 4 E. & B. 549.

(c) This section taken in connection with sect. 89, has been construed to be *permissive* only, and not to require the company to carry all sorts of goods upon every part of the line of railway. *Johnson v. Midland R. Co.*, 4 Exch. 367, post, 517. And see *Hare v. L. and N. W. R. Co.*, 30 L. J. (Ch.) 817, 824; 2 Johns. & Hem. 80.

(d) *South Yorkshire v. Great Northern R. Co.*, 22 L. J. (Exch.) 305; 9 Exch. 55, 642; 7 Railw. C. 773; 3 De G., M. & G. 576. A railway company cannot under this clause delegate its whole powers to another

company, ante, 93, et seq. And see *East Lancashire R. Co. v. Lancashire and Yorkshire R. Co.*, 9 Exch. 591; 25 Law J. (Exch.) 278.

(e) In *Crouch v. L. and N. W. R. Co.*, 14 C. B. 212, *Jervis, C. J.*, said the effect of sects. 86, 87 and 89 was to make the defendants common carriers.

(f) Post, 500, note (l).

(g) Carriers must be treated the same as other individuals. *Crouch v. Great Northern R. Co.*, 9 Exch. 556; 11 Exch. 742. And one carrier must be treated the same as another. *Parker v. Great Western R. Co.*, 7 Man. & G. 253. And the company cannot charge more in proportion for "packed parcels" (i. e., parcels made up of several small parcels in one envelope) than for other goods. *Crouch v. G. N. R. Co.*, *ubi supra*; and see *Pickford v. Grand Junction R. Co.*, 10 M. & W. 399; 3 Railw. C. 193; *Parker v. G. W. R. Co.*, 11 C. B. 545; *Edwards v. Same*, 11 C. B. 588; *Crouch v. L. and N. W. R. Co.*, 2 C. & K. 789; 14 C. B. 255; *Piddington v. South-Eastern R. Co.*, 26 L. J. (C. P.) 295; 5 C. B. (N. S.)

or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway, under the same circumstances; and no reduction or advance in any such tolls shall be made, either directly or indirectly, in favour of or against any particular company or person travelling upon or using the railway. If railways are amalgamated, tolls must, as we have seen (*h*), be charged at a rate calculated as if the amalgamated railways had originally formed one line: (Sect. 91.) Upon payment of the tolls demandable, all companies and persons are entitled to use the railway with engines and carriages properly constructed, subject to the 5 & 6 Vict. c. 55 (*i*), and the regulations made by the com-

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8 & 9 Vict. c. 20, s. 91, App. 92.

Where railways amalgamated.

Railway free on payment of tolls.

111; *Garton v. Bristol and Exeter R. Co.*, 28 L. J. (Exch.) 169; 4 H. & N. 831; 30 L. J. (Exch.) 241; *Same v. Same*, 30 L. J. (Q. B.) 273; 1 Best & S. 112. There are several cases now pending for argument in the Common Law Courts in England in relation to "packed parcels," viz. *Sutton v. Great Western R. Co.*, and *Same v. South Eastern R. Co.* and *Same v. South Western R. Co.* *Sutton v. G. W. R. Co.* was argued in Exch. Ch., Dec. 1864. The company have no right to open parcels to see if they are packed parcels, 2 C. & K. 789. But where a number of loose parcels were sent with no common direction upon them, and the company had a right to charge a parcel rate for small parcels, and a tonnage rate for large ones, it was held that they were entitled to the parcel rate. *Baxendale v. Eastern Counties R. Co.*, 26 L. J. (C. P.) 137. If a carrier wishes to receive his goods at the terminus the company are not entitled to charge him the same sum for carriage as they charge to other persons whose goods are delivered at the final point of destination. *Pickford v. Grand Junction R. Co.*, ubi supra; and see *Baxendale v. West Midland R. Co.*, coram Stuart, V. C., June, 1862. And where a company were empowered to charge for parcels not exceeding 500 lbs. weight, "any sum which they think fit," and charged a through rate, which included collection and delivery, in all cases, but formerly made a rebate for collection and delivery if done by the customer, and afterwards refused to make any rebate for goods under 500 lbs. weight; it was held that the plaintiff who had delivered goods to the company to be carried, but had done the collection and delivery himself, might recover the rebate from the company. *Baxendale v. Great Western R. Co.*, 32 L. J. (C. P.) 225; 33 L. J. (C. P.) 197. Money had and received lies to recover back overcharges. See the cases supra. If an overcharge is made by a company for carrying goods on another line of railway as well as their own, the whole sum paid as overcharge may be recovered back from the company receiving

the money. In such an action it is not necessary for plaintiff to show that he tendered the proper sum legally due for the carriage. *Parker v. Bristol and Exeter R. Co.*, 6 Exch. 702; 6 Railw. C. 776; 20 L. J. (Exch.) 442. The County Court has jurisdiction to entertain causes relating to tolls payable to railway companies. *Hunt v. Great Northern R. Co.*, 10 C. B. 900; 2 L., M. & P. 268; 20 L. J. (Q. B.) 349; *Parker v. Bristol and Exeter R. Co.*, 6 Exch. 184; 20 L. J. (Exch.) 112; 2 L., M. & P. 136. See *R. v. Everett*, 1 E. & B. 273. A railway company having become lessees of another line, which they worked in connection with their own, published two tables of rates applicable to the different railways; the rates charged on the leased line were higher than on the main line, and coal loaded on the leased line and carried along it and the main line was charged at the higher rate for the whole distance; while coal loaded on the main line and carried along it and the leased line was charged at the lower rate throughout; it was held that the company were not prevented by the equality clauses in their act from charging in this way. *Finnie v. Glasgow R. Co.*, 15 Court of Sess. Cas. 523; 26 Law T. Rep. 14. In *Attorney-General v. Birmingham and Derby Junction R. Co.*, 2 Railw. C. 124, an injunction was refused by the Lord Chancellor to restrain the company (whose act contained an equality clause) from charging a smaller fare to passengers who travelled from D. to H., intending to proceed from H. to London by another railway, than they charged passengers from D. to H. who had no such intention. In *Branley v. South-Eastern R. Co.*, 31 L. J. (C. P.) 286; 9 Jur. (N. S.) 329; 12 C. B. (N. S.) 63, the defendants, who were created a steam packet company by statute, which contained an equality clause as to passengers, but none as to goods, were held justified in charging double rates for "packed" parcels from Boulogne to Folkestone.

(*h*) Ante, 493.

(*i*) Post, App. 10.

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8 & 9 Vict. c. 20, s. 93, App. 92.

List of tolls and milestones.

General lien for tolls.

Account of lading.

Disputes as to tolls,

as to weights, &c.

Toll collector liable for wrongful detention of goods, &c.

Frauds by passengers.

pany: (Sect. 92.) A list of tolls must be exhibited at all stations where tolls are payable (Sect. 93) (*k*), and mile-stones, and posts, at the distance of one quarter of a mile from each other, must be set up and maintained by the company (Sect. 94), otherwise tolls cannot be collected; and penalties are incurred for defacing notice-boards or mile-stones: (Sect. 95.) Toll is payable to such persons, at such places and in such manner as the company shall appoint: (Sect. 96.) In default of payment of tolls (*l*) for carriages or goods, the company may detain and sell such carriages and goods, or if removed, any other carriages or goods on their premises belonging to the defaulter, and pay themselves; or tolls may be recovered by action at law (*m*): (Sect. 97.) The owner of carriages or goods must deliver to the collector of tolls an exact account, in writing, signed by him, of the number and quantity of goods, &c., conveyed, and of the place whence they came and whither they are going (Sect. 98); and if any person fails to give such account, or if he gives a false account, or if he unloads goods with intent to avoid payment of tolls, he is liable to a penalty in addition to the tolls: (Sect. 99.) Disputes concerning the amount of the tolls may be settled by a justice, and the company may detain the goods meanwhile: (Sect. 100.) If any difference arises between the toll collector and the owner or person in charge of any carriage passing or being on the railway, or of any goods conveyed by such carriage, respecting the weight, quantity, quality, or nature of the goods conveyed, the company may detain the carriage or goods, and examine the same: and if, upon examination, the goods appear to be of greater weight, &c., the party giving a false account is liable to pay the costs of examination: but if the result be otherwise, the company are liable to pay such costs and damages for the detention of the goods: (Sect. 101.) If it appears to a justice, that such examination and detention were without reasonable ground, or vexatious, then the collector is liable personally to pay the costs and damages, and the justice may issue a warrant for the recovery of the same: (Sect. 102.) If a passenger endeavours to avoid paying his fare (*n*), in any of the modes prescribed, he is liable to be fined (Sect. 103); and may be apprehended and detained until he can conveniently be taken before a justice (*o*): (Sect. 104.) The company

(*k*) See *Fripp v. Chard, &c. R. Co.*, 22 L. J. (Ch.) 1084; 17 Jur. 887.

(*l*) As to the meaning of the word "toll," see the interpretation clause, post, App. 74, and *Hunt v. Great Northern R. Co.*, 2 L., M. & P. 268; 10 C. B. 900; and *Purker v. Bristol and Exeter R. Co.*, 2 L., M. & P. 136; 6 Exch. 184; 20 L. J. (Exch.) 112.

(*m*) Where a railway company entitled to distrain for tolls, demanded a sum in gross made up of two sums, one due for tolls, the other not so due, and the party tendered the

amount due for tolls as being all that was due; it was held that the company were not entitled to *distrain*, but were not precluded by the tender from recovering the toll. *Field v. Newport, &c. R. Co.*, 27 L. J. (Exch.) 396.

(*n*) See *R. v. Frere*, 4 E. & B. 598, *supra*, 486, 489.

(*o*) When such detention would be illegal, see *Chilton v. London and Croydon R. Co.*, 16 M. & W. 212; *S. C.*, 5 Railw. C. 4.

are not bound to carry aquafortis, oil of vitriol, gunpowder, lucifer matches, or other dangerous goods; and if any person sends such goods without giving notice to the company (*p*), he is liable to a penalty; suspicious parcels may be opened (*q*): (Sect. 105.)

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8 & 9 Vict. c. 20, s. 105, App. 93.

Dangerous goods.

The result is, that a railway company may be simply the owners of the way on which others may place steam power and carriages, and convey persons and goods; or they may unite both characters, of owners of the way and carriers on it, in themselves. But although the railway is thus, under certain restrictions, thrown open to the public as a highway, experience proves, that, as the stations and watering-places are necessarily under the entire control of the company, they enjoy a monopoly as carriers on the line. It seems, therefore, to be within the scope and object of this work to state a few of the leading principles of law applicable to carriers.

It was decided in an early case, that railway companies engaged in carrying goods on a railway are common carriers (*r*): they are therefore subject, in that character, to the same liabilities as other common carriers. If any doubt existed on this point, it is removed by the Railways Clauses Act, which provides "that nothing shall extend to charge or make liable a railway company, further or in any other case than where, according to the law of the realm, stage-coach proprietors and common carriers would be liable; nor shall extend, in any degree, to deprive the company of any protection or privilege which common carriers or stage-coach proprietors may be entitled to, but, on the contrary, the company shall, at all times, be

Railway companies are common carriers.

Sect. 89.

(*p*) A guilty knowledge on the part of the sender is necessary to render him liable to the penalty. And, therefore, where a carrier, who delivered the goods to the railway company, was imposed upon by his customer, it was held that the carrier could not be convicted. *Heane v. Garton*, 2 Ell. & Ell. 66. Though, semble, the customer might have been convicted. *Ibid.*; and see *Farrant v. Barnes*, 31 L. J. (C. P.) 137.

(*q*) Post, 519, note (*h*).

(*r*) *Palmer v. Grand Junction R. Co.*, 4 M. & W. 749; S. C., 7 Dowl. 232; and see *Carpue v. London and Brighton R. Co.*, 5 Q. B. 747; *Crouch v. L. and N. W. R. Co.*, 23 L. J. (C. P.) 73. In some of the early special railway acts a provision is contained that no action or other proceeding shall be brought for anything done in pursuance of the acts, unless a certain specified previous notice shall be given by the party intending to prosecute such action. It has been held, under these acts, that no notice was necessary where a wrongful act done by such a company, independent of the authority conferred by the statute, is complained of, as for negligence, in carrying goods or passengers. *Palmer v. Grand Junction R. Co.*, ubi supra; *Carpue v. London and Brighton R.*

Co., ubi supra. But where an action was brought to recover the difference between the sums charged to plaintiff for the carriage of goods, and those charged to other persons for the conveyance of like goods, it was held that the charges so made must be considered as something done under the authority of the act, and that the company were entitled to notice of action. *Kent v. Great Western R. Co.*, 4 D. & L. 481; S. C. 4 Railw. C. 699; see also *Davis v. Curling*, 8 Q. B. 286; *Smith v. Hopper*, 9 Q. B. 1005; *Newton v. Ellis*, 5 E. & B. 115; *Burling v. Harley*, 27 L. J. (Exch.) 258; *Mason v. Birkenhead Improvement Commissioners*, 29 L. J. (Exch.) 407; *Kennet and Avon Canal Co. v. Great Western R. Co.*, 7 Q. B. 824. The court refused, on a motion to review the Master's taxation, to entertain an objection to the amount of costs of notice of action allowed to plaintiff, where it appeared that no objection had been taken when the question was before the Master. *Kent v. Great Western R. Co.*, ubi supra. See also when an objection, that no notice was given, cannot be taken when a cause is referred to an arbitrator. *Parker v. Great Western R. Co.*, 21 L. J. (C. P.) 73.

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506.

entitled to the benefit of every such protection and privilege." And by the Railway and Canal Traffic Act, 1854, the benefits of the Carriers Act are saved, in respect of articles of the description mentioned in that act.

*Liabilities of
companies as
carriers at com-
mon law.*

II. *Liabilities of Railway Companies as Carriers at Common Law, and as controlled by the Railway and Canal Traffic Act, 1854.*

At common law, a common carrier stands in the situation of an insurer of the property entrusted to him, and is answerable for every loss or damage happening to it whilst in his custody, no matter by what cause occasioned, unless it were by the act of God, such as a tempest, or that of the king's enemies(s). Common carriers are therefore held responsible by the common law for loss by robbery (to prevent combination of robbers and carriers), as well as for the wrongful acts of mere strangers, in regard to the property bailed to them for transportation, and notwithstanding they are not personally, or by their servants, guilty of any negligence or omission of duty; for the case is not within the exception of the act of God or of the public enemy; and they have their remedy over against the wrongdoer for the damages they may sustain by his wrongful act(t). And upon the principle above mentioned, carriers are liable for a loss by an accidental fire or conflagration, while the goods are in their custody(u).

This was the rule of the common law, which regulated all cases in which there was no special contract between carriers and their employers. The result was, that carriers soon found it necessary, for their protection, to make special contracts in all cases where goods of more than ordinary value were delivered to their care(x).

(s) This was laid down in *Forward v. Pittard*, 1 T. R. 27, and *Garside v. Trent Navigation Co.*, 4 T. R. 581, and it has never been disputed since. Per Cresswell, J., in *Richards v. London, Brighton and S. C. R. Co.*, 7 C. B. 860. As to the rights of the railway company against an insurance company upon a floating policy when station and warehouses burnt down and goods consumed, see *L. and N. W. R. Co. v. Glyn*, 1 Ell. & Ell. 652.

(t) *Trent and Mersey Navigation Co. v. Wood*, 4 Doug. 287; *Barclay v. Cucula-y-Gana*, 3 Doug. 389.

(u) *Hyde v. Trent and Mersey Navigation Co.*, 5 T. R. 389; *Gatcliffe v. Bourne*, 4 Bing. N. C. 314; *S. C.* in error, 8 Scott, 604; 3 Man. & G. 643; 7 Man. & G. 850; 11 Cl. & Fin. 45.

(x) As early as Lord Coke's time, we find this practice recommended. In *Southcote's case*, 4 Rep. 84, Lord Coke observes, "Nota

reader, it is good policy for him who takes any goods to keep, to take them in special manner, *scil.* to keep them as he keeps his own goods, or to keep them the best he can at the peril of the party; or if they happen to be stolen or purloined, that he shall not answer for them; for he who accepteth them ought to take them in such or the like manner, or otherwise he may be charged by his general acceptance." In *Butt v. Great Western R. Co.*, 11 C. B. 140; 20 L. J. (C.P.) 241, the Court of Common Pleas, on the authority of *Finucane v. Small*, 1 Esp. 315, intimated that at common law a carrier is not liable for felony committed by his servants, unless he has been guilty of gross negligence, *sed quære*. *Finucane v. Small* was not the case of a carrier, and see *cas. cit. supra*, note (t); *Butt v. G. W. R. Co.* was explained in *G. W. R. Co. v. Rimmell*, 18 C. B. 575; 27 L. J. (C. P.) 201. See further, post, 514.

The legislature (*y*), in more modern times, has also granted a protection to carriers, which, as we shall see hereafter, affords them much more substantial security than they had attained by resorting to special contracts. The usual course taken by carriers to evade the liabilities they were under at common law was, by inserting in newspapers, distributing in hand-bills, and sticking up in their offices, a notice that they would not be accountable for the loss of any property beyond a certain value, unless insured, and paid for accordingly, at the time of delivery (*z*). But the mere advertisement by the carrier of the terms and limitation of his responsibility, however public it might have been, had no effect, except upon those persons to whom knowledge of it was directly or constructively brought home; when, however, such knowledge was proved, the notice constituted a special contract between the parties (*a*).

*Liabilities of
Companies as
Carriers at Com-
mon Law.*

Notice limiting
liability.

The most usual evidence to show this was, by proof that a notice was put up in the office, where goods were received and entered for the purpose of carriage, in so conspicuous a situation, that it must (unless he were guilty of wilful negligence) have attracted the attention of the plaintiff or his agent. It was, however, decided, that this proof failed where the party who delivered the goods at the office could not read (*b*); and where the goods were delivered by a porter, who admitted that he had frequently been at the defendants' office, and that he had seen a painted board, but did not suppose that it contained anything material, and in fact had never read it, it was held, that, although the board contained a notice of limitation, the evidence of notice was insufficient (*c*). So, the proof failed where the notice at the office stated the advantages of carriage by the particular waggon in large letters, and the notice of non-responsibility in small characters (*d*), although at the termini of the carrier's route notice was given at the offices by means of a board inscribed with large letters. So, where the printed notice was in a situation where the plaintiff was not likely to see it (*e*). So, also, where the goods were not delivered at the office where the notice was exhibited, but were delivered into a cart sent round to receive goods; or at an intermediate stage between the two places, from each of which the carrier conveyed goods to the other, there being no notice at the place of delivery, although notices were suspended at the two termini (*f*).

Proof of notice,

Another usual mode of proof was by evidence that notice was given by means of printed cards, or by advertisements in the public newspapers; but it was ruled that this was insufficient, unless it be

(*y*) By stat. 11 Geo. 4 & 1 Will. 4, c. 68, post, 510.

(*z*) Smith's Mercantile Law, 169.

(*a*) *Wyld v. Pickford*, 8 M. & W. 443.

(*b*) *Davis v. Willan*, 2 Stark. 279.

(*c*) *Kerr v. Willan*, 2 Stark. 53.

(*d*) *Butler v. Heane*, 2 Camp. 415.

(*e*) *Walker v. Jackson*, 10 M. & W. 161.

(*f*) *Gouger v. Jolly*, 1 Holt, N. P. C.

proved that the plaintiff had seen such cards, or read the newspapers (*g*), and even then it was a question for the jury (*h*).

Where it appeared that the plaintiff had been in the habit of sending parcels by the defendant's conveyance, and that two parcels had at different times been lost, and that the plaintiff had acquiesced in those losses, desiring the witness for the future to insure the parcels sent, it was held to be evidence of the plaintiff's knowledge that the defendant had limited his responsibility (*i*). And the defendant might show, that, when other parcels were delivered to him by the plaintiff, a ticket was delivered with each parcel containing the notice (*k*).

Effect of notice.

In all cases where the notice could not be brought home to the person interested in the goods, or his agent, directly or constructively, the notice was a mere nullity, and the carrier was responsible according to the general principles of the common law (*l*). But common carriers could not, by thus giving a notice, exempt themselves from *all* responsibility, so as to evade altogether the salutary policy of the common law. The effect of the notice was merely to divest the carrier of the character of an insurer; but not to exempt him from responsibility for losses by the malfeasance, misfeasance, or gross negligence of himself and servants. If, therefore, he converted the goods to a wrong use; if he negligently made a wrong delivery to a person not entitled to them (*m*); or if he were guilty of gross negligence in the carriage or care of them, the loss must be borne by the carrier; notwithstanding his notice: for the terms of it are uniformly construed not to exempt him from such losses (*n*).

It was for some time doubtful whether a carrier was liable for losses occasioned by ordinary negligence, in cases where he had given the usual notice. The case of *Wyld v. Pickford* (*o*), however, decided this question in the affirmative.

The Carriers Act (*p*), to which we shall presently refer, rendered such *general notices* (when given by land carriers (*q*)) of no avail (*r*), but they are still frequently given; and as carriers were clearly at liberty to make a *special contract* with reference to each particular transaction relating to the carrying of goods (*s*), it became the almost

(*g*) *Clayton v. Hunt*, 3 Camp. 27.

(*h*) *Rowley v. Horne*, 3 Bing. 2. But see the cases mentioned post, 505, note (*t*).

(*i*) *Roskell v. Waterhouse*, 2 Stark. 461.

(*k*) *Mayhew v. Eames*, 3 B. & C. 603.

(*l*) Story on Bailments, 358; *Brooke v. Pickwick*, 4 Bing. 218.

(*m*) *Duff v. Budd*, 3 B. & Bing. 177; *Birkett v. Willan*, 2 B. & Ald. 356.

(*n*) Story on Bailments, 364. And see *Phillips v. Clark*, 26 L. J. (C. P.) 168; *Same v. Edwards*, 28 L. J. (Exch.) 52.

(*o*) 8 M. & W. 443. See also *Hinton v. Dibbin*, 2 Q. B. 661.

(*p*) 11 Geo. 4 & 1 Will. 4, c. 68, post, 510.

(*q*) The Carriers Act only applies to carriers by land. See sect. 1, post, 510.

(*r*) See sect. 4, post, 513. Care must however be taken to give the notice required by sect. 2, post, 512.

(*s*) See sect. 6, post, 513; also *Palmer v. Grand Junction R. Co.*, 4 M. & W. 768. If the declaration charge the company with negligence as common carriers, and a special contract is proved, the plaintiff will be nonsuited. *Latham v. Rutley*, 2 B. & C. 20; *Walker v. York and North Midland R. Co.*, 2 E. & B. 750; *York, Newcastle and Ber-*

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invariable practice for railway companies to carry horses, and other valuable animals, under such special contracts; so that, as it will be seen by numerous cases (*t*), they were enabled to exempt themselves from the effects of even gross negligence (*u*). This led to the interference of the legislature, and by the Railway and Canal Traffic Act, 1854 (*x*), the following restrictions are imposed:—

“Every such company as aforesaid (*y*) shall be liable for the loss of or for any injury done to (*z*) any horses, cattle or other animals (*a*), or to any articles, goods or things, in the receiving (*b*), forwarding or delivering thereof (*c*), occasioned by the

Company to be
liable, notwith-
standing notices,

wick R. Co. v. Crisp, 14 C. B. 527; *Hughes v. Great Western R. Co.*, 14 C. B. 637; *White v. Same Co.*, 26 L. J. (C. P.) 158. And it is sufficient for a carrier, who has received goods to be carried upon a special contract, if charged as a common carrier, to traverse the bailment on such terms. *Shaw v. York and North Midland R. Co.*, 13 Q. B. 347; *Crouch v. L. and N. W. R. Co.*, 7 Exch. 705. Though it is usual now in practice to plead the special contract. *Peek v. North Staffordshire R. Co.*, 29 Law J. (Q. B.) 97.

(*t*) *Austin v. Manchester, Sheffield and Lincolnshire R. Co.*, 21 L. J. (C. P.) 179; 10 C. B. 454; 16 Jur. 763; 16 Q. B. 600; *Chippendale v. Lancashire and Yorkshire R. Co.*, 21 L. J. (Q. B.) 22; 15 Jur. 1106; *Fowks v. Great Western R. Co.*, 7 Exch. 699; 22 L. J. (Exch.) 76; *Carr v. Lancashire and Yorkshire R. Co.*, 7 Exch. 707; 21 L. J. (Exch.) 261; 17 Jur. 397. When contracts of this description were made, before the Railway and Canal Traffic Act, 1854, it was immaterial whether the party sending the cattle or goods signed a written document or note; it was sufficient if a ticket were delivered to him, or even if a verbal statement was made by a clerk in the office. *Morville v. Great Northern R. Co.*, 21 L. J. (Q. B.) 319; 16 Jur. 528; and see *Walker v. York and North Midland R. Co.*, 2 Exch. 750; 23 L. J. (Q. B.) 73; *York and Berwick R. Co. v. Crisp*, 23 L. J. (C. P.) 125. But see now 17 & 18 Vict. c. 31, s. 7, *supra*, in text. It seems that the company would be liable for injuries done to cattle in the course of their being removed to and from the railway carriages in which they are carried, just as if the accident occurred whilst they were travelling over the line of railway: See *Willoughby v. Horridge*, 22 L. J. (C. P.) 90; where a ferryman was held liable for the loss of a horse, caused by using a defective stage to land the animal on the shore. The agreement by carriers to be accountable for the safe carriage of a parcel expressed to be of greater value than 20*l.* requires no stamp, if the value of the carriage be below that sum; for the carriage, and not the goods, is the subject of the agreement. *Latham v. Rutley*, 1 Ry. & M. 13; see 8 Exch. 624.

(*u*) In the judgment of the Exchequer Chamber, in *Beal v. South Devon R. Co.*, 11 L. T. (N. S.) 184, it is laid down that “for

all practical purposes the rule may be stated thus, that the *failure to exercise reasonable care, skill and diligence is gross negligence*. What is reasonable varies in the case of a gratuitous bailee, and that of a bailee for hire. From the former is reasonably expected such care and diligence as persons ordinarily use in their own affairs, and such skill as he has. From the latter is reasonably expected care and diligence, such as are usual, or, in the absence of usage, are to be expected by an analogy to the ordinary and usual course of similar business, and such skill as he undertakes to have, namely, the skill usual in the business for which he receives payment.”

(*x*) By 26 & 27 Vict. c. 92, s. 31, post, App., the provisions of this act are extended to steam-vessels, and to the traffic carried on thereby.

(*y*) *I. e.* “Railway Company, Canal Company, and Railway and Canal Company.” The statute does not, therefore, apply to cases where ordinary carriers use a railway for the purpose of carrying cattle. But it is more extensive than the Carriers Act, which only applies to carriers by *land*.

(*z*) Deterioration of cattle from want of food and water is an injury within this section. *Allday v. Great Western R. Co.*, 13 Weekly Rep. 43; 34 L. J. (Q. B.)

(*a*) Dogs were held within it. *Harrison v. London, Brighton and South Coast R. Co.*, 29 L. J. (Q. B.) 209; 2 Best & S. 122; though the following words, “articles, goods or things,” which seem to make the matter clearer, appear to have escaped the notice of the court in that case. The reversal of the decision in the Exch. Ch. does not affect this point; 31 L. J. (Q. B.) 113; 2 Best & S. 152.

(*b*) In *Hodgman v. Midland R. Co.*, 33 L. J. (Q. B.) 233, it was held (Cockburn, C. J., dissentiente), that plaintiff could not recover more than 50*l.* for injuries resulting in death to a valuable horse. The horse was going by rail; whilst in the station, on its way to the platform, the horse backed upon some girders negligently left there by defendants. No ticket had been then taken, nor declaration of value made, or fare demanded.

(*c*) This section does not apply to goods left at the cloak room. *Van Toll v. South-Eastern R. Co.*, 31 L. J. (C. P.) 241; 12 C. B. (N. S.) 75.

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c. 31, s. 7.Conditions must
be reasonable.Limitation of
amount of
liability.Claimant to prove
value.Special contracts
must be signed.Saving of Carriers
Act.Special contracts
are within the
enacting clause.

neglect or default of such company (*b*) or its servants, notwithstanding any notice, condition or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such notice, condition or declaration being hereby declared to be null and void: *Provided always*, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding and delivering of any of the said animals, articles, goods or things, as shall be adjudged by the court or judge, before whom any question relating thereto shall be tried, to be just and reasonable: *Provided always*, that no greater damages shall be recovered for the loss of or for any injury done to any of (*c*) such animals, beyond the sums hereinafter mentioned; (that is to say,) for any horse fifty pounds; for any neat cattle, per head, fifteen pounds; for any sheep or pigs, per head, two pounds; unless the person sending or delivering the same to such company shall, at the time of such delivery, have declared them to be respectively of higher value than as above mentioned, in which case it shall be lawful for such company to demand and receive (*d*), by way of compensation for the increased risk and care thereby occasioned, a reasonable per-centage (*e*) upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge; and such per-centage or increased rate of charge shall be notified in the manner prescribed in the statute 11 Geo. 4 & 1 Will. 4, c. 68 (*f*), and shall be binding upon such company in the manner therein mentioned: *Provided also*, that the proof of the value of such animals, articles, goods and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury: *Provided also*, that no special contract between such company and any other parties respecting the receiving, forwarding or delivering of any animals, articles, goods or things as aforesaid, shall be binding upon or affect any such party, unless the same be signed (*g*) by him or by the person delivering (*h*) such animals, articles, goods or things respectively for carriage: *Provided also*, that nothing herein contained shall alter or affect the right, privileges or liabilities of any such company under the act, 11 Geo. 4 & 1 Will. 4, c. 68, with respect to articles of the descriptions mentioned in the said act."

This very obscurely-worded section (*i*) (which must be admitted to

(*b*) In *Harrison v. London, Brighton and S. C. R. Co.*, 31 L. J. (Q. B.) 114, Erle, C. J., said, "If the legislature intended to provide for all loss, however occasioned, the words 'loss occasioned by the neglect or default of the company,' would have no meaning, and no operation. The history of the section, as contained in all the judgments, from *Johnson v. Midland R. Co.*, 4 Exch. 367, and *Simons v. Great Western R. Co.*, downwards, shows that the legislature, by the words 'loss occasioned by the neglect or default of the company,' meant, occasioned by culpable conduct and not a mere failure to deliver, occasioned by inevitable accident without any blame."

(*c*) See *Harrison v. London, Brighton and S. C. R. Co.*, 29 L. J. (Q. B.) 113. These words should be read as "any of the following of such animals."

(*d*) See post, 521, note (*c*).

(*e*) In *Robinson v. South Western R. Co.*, tried in C. P., Guildhall, 15 Dec., 1864, a London special jury found 5 per cent. on additional value of horse above 50*l.*, for car-

riage from Liss to London (about 50 miles) reasonable. Some companies charge a small additional per centage *per mile*, while others charge an equal per centage whatever the distance may be. This latter plan seems unreasonable, though in some particular cases the amount so charged may not be unreasonable.

(*f*) See post, 510.

(*g*) A letter, directing the defendants "to forward the marbles uninsured," was held by the House of Lords not to be sufficient, as it did not either expressly or by reference embody the conditions attached by the company to goods uninsured. *Peck v. North Staffordshire R. Co.*, 10 H. L. C. 472; 32 L. J. (Q. B.) 241, affirming S. C. in 27 L. J. (Q. B.) 465, but reversing the judgment of the Exch. Ch., 29 L. J. (Q. B.) 97.

(*h*) Signature by a carrier employed by both parties, a common agent, is sufficient. *Aldridge v. Great Western R. Co.*, 33 L. J. (C. P.) 161; 15 C. B. (N. S.) 582.

(*i*) It is said in argument in *Beal v. South Devon R. Co.*, 29 L. J. (Exch.) 441, to

be a marvellous instance of blundering legislation) has given rise to considerable litigation. It has, however, been laid down (*k*), that the true construction of the act, and the result of its provisions, is that a general notice to limit the liability of the company is null and void, but the parties may make special contracts with the company themselves, provided those contracts are signed by them and are adjudged by the court or judge to be just and reasonable. And whereas the monopoly created by railways compels the public to employ them in the conveyance of their goods, the legislature have thought fit to impose the further security that the court shall see that the condition or special contract is just and reasonable. It must, therefore, be considered as settled, until the act of Parliament is altered or repealed, that special contracts are within the enacting clause of sect. 7, though judges have frequently expressed their dissatisfaction at having to decide a question which had much better be left to parties themselves to settle; and the Court of Exchequer, in *Beal v. South Devon R. Co.* (*l*), seemed very much disposed to get out of the difficulty by holding any contract which the party had signed to be reasonable, *quoad* him; and Erle, C. J., and Keating, J., in *Harrison v. London, Brighton and South Coast R. Co.* (*m*), expressed an opinion that the section in question is confined in its application to cases where the loss or injury is occasioned by the neglect or default of the company.

It becomes important, therefore, to ascertain what conditions are reasonable and what unreasonable. But it should in the first place be stated, that if conditions are separable they may be separated, and one upheld as reasonable whilst another is held void as unreasonable (*n*); and a reasonable condition may be applied to a state of facts which makes it unreasonable (*o*).

The following conditions have been held to be reasonable:—

“Goods conveyed at special or mileage rates must be loaded and unloaded by the owners or their agents, and the company will not be responsible for any risk of stowage, loss or damage, however caused, nor for discrepancy in the delivery as to either quantity, number or

Liabilities of Companies as Carriers under Railway and Canal Traffic Act, 1854.

Special contracts must be signed and reasonable.

Conditions held reasonable.

have been suggested to Mr. Cardwell by Messrs. Baxendale & Co., trading as Pickford & Co. In all probability, however, the clause as introduced was, as usual, altered by tacking proviso upon proviso, to suit the crochets of various members of Parliament, until it became, as it now stands, almost unintelligible.

(*k*) *Simons v. Great Western R. Co.*, 26 L. J. (C. P.) 25; 18 C. B. 826; *M'Manus v. Lancashire and Yorkshire R. Co.*, 4 H. & N. 327; 28 L. J. (Exch.) 353, reversing S. C., 27 L. J. (Exch.) 201; 2 H. & N. 693; *Peck v. North Staffordshire R. Co.*, 10 H. L. C. 473; 32 L. J. (Q. B.) 241; affirm-

ing S. C. in Q. B., 27 L. J. (Q. B.) 465; 2 Best & S. 122. (The reversal in the Exch. Ch., 29 L. J. (Q. B.) 97; 2 Best & S. 152, does not affect this point.)

(*l*) 29 L. J. (Exch.) 441.

(*m*) 31 L. J. (Q. B.) 113; 2 Best & S. 152, reversing S. C. *ibid.* 122; 29 L. J. (Q. B.) 209.

(*n*) *Simons v. Great Western R. Co.*, 26 L. J. (C. P.) 25; *M'Cance v. L. and N. W. R. Co.*, 31 L. J. (Exch.) 65; 7 H. & N. 477; 34 L. J. (Exch.).

(*o*) Per Martin, B., in *Gregory v. West Midland R. Co.*, 33 L. J. (Exch.) 157.

*Liabilities of
Companies as
Carriers under
Railway and
Canal Traffic Act,
1854.*

Loss of market.

Injury to live
stock.

Claim to be made
within limited
time.

Untrue descrip-
tion.

Fish.

*Beal v. South
Devon R. Co.*

weight, nor for the condition of articles so carried, nor for detention or delay in the conveying or delivery of them, however caused (p)."

"That the company will not, under any circumstances, be liable for loss of market or other claim arising from delay or detention of any train, whether at starting or at any of the stations or in the course of the journey;" in answer to a claim arising from loss of market (q).

"The company is to be held free from all risk or responsibility in respect of any loss or damage arising in the loading or unloading, from suffocation or from being trampled on, bruised or otherwise injured in transit, from fire, or from any other cause whatever. The company is not to be held responsible for carriage or delivery within any certain or definite time, nor in time for any particular market;" in answer to a claim for suffocated and injured cattle sent by rail (r).

"No claim for deficiency, damage or detention shall be allowed unless made within three days after delivery of the goods, nor for loss unless made within seven days after the time when they should have been delivered."

"The company will not be answerable for the loss or detention of any goods untruly or incorrectly described or declared in the declaration or receiving-note furnished by the company (s)."

"The company will not undertake to convey fish except under the general conditions published at the railway stations in the train tables, and except under the following special conditions:—'That the company shall not be responsible under any circumstances for loss of market, or other loss or injury arising from delay or detention of trains, exposure to weather, stowage, or from any cause whatever other than gross neglect or fraud.'"

In the time tables of the company the regulations for conveying fish were as follows:—

"Fish, under special conditions, will be conveyed by (certain specified trains). No fish will be conveyed by the 10.45 a.m. up-train. The company will not undertake to carry fish by the 7.10 p.m. up-train, but in limited quantities, subject in all cases to the immediate convenience and arrangements of the company." "The company hereby give notice that fish conveyed upon the railway is so conveyed by special agreement only, and on the express condition that the sender or his agent shall, on delivering the fish at the company's station or other place whence the same is to be conveyed, sign an order and declaration exempting the company from all liability for

(p) *Simons v. G. W. R. Co.*, 26 L. J. (C. P.) 25.

(q) *White v. G. W. R. Co.*, 26 L. J. (C. P.) 158. See *Beal v. South Devon R. Co.*, post, 509, note (t).

(r) *Pardington v. South Wales R. Co.*, 26

L. J. (Exch.) 105; but see *M'Manus v. Lancashire and Yorkshire R. Co.*, 28 L. J. (Exch.) 353; 4 H. & N. 327; post, 510.

(s) *Lewis v. Great Western R. Co.*, 29 L. J. (Exch.) 425; 5 H. & N. 867.

loss or injury arising from delay or detention of train, or from any cause other than gross neglect or fraud (*t*)."

A declaration, signed by the sender, that the value of seven horses did not exceed 10*l.* per horse (*u*).

"The company will not be liable in any case for loss or damage to any horse or other animal above the value of 40*l.*, or any dog above the value of 5*l.*, unless a declaration of its value, signed by the owner or his agent at the time of booking, shall have been given to them; and by such declaration the owner shall be bound, the company not being in any event liable to any greater amount than the value so declared. The company will in no case be liable for any injury to any horse or other animal, or dog, of whatever value, when such injury arises wholly or partially from fear or restiveness. If the declared value of any horse or other animal exceed 40*l.*, or any dog 5*l.*, the price of conveyance will, in addition to the regular fare, be after the rate of 2*l.* 10*s.* per cent., or 6*d.* per pound upon the declared value above 40*l.*, whatever may be the amount of such value and for whatever distance the horse or other animal is to be carried (*x*)."

"The company will not be answerable for the loss or detention in respect of goods destined for places beyond the limits of the company's railway; and as respects the company, their responsibility will cease when such goods shall have been delivered over to another carrier in the usual course for further conveyance. Any money which may be received by the company as payment for the conveyance of goods beyond their own limits will be so received only for the convenience of the consignors, and for the purpose of being paid to the other carrier (*y*)."

On the other hand, the following conditions have been held to be unreasonable. A condition that—

"The company will not be accountable for the loss, detention or damage of any package insufficiently or improperly packed, marked, directed or described, or containing a variety of articles liable by breakage to damage each other," with an averment that goods were insufficiently *packed*, was held to be no answer to an action for the loss of goods, it being quite immaterial whether the goods were properly packed or not if the whole package was lost; and Jervis, C. J., said, "I think we are bound to look at the particular matters that are relied on to see if they are just and reasonable, and we are

Liabilities of Companies as Carriers under Railway and Canal Traffic Act, 1854.

Value of horses.

Dogs.

Harrison v. London, Brighton and South Coast R. Co.

Limiting responsibility of company to their own line.

Aldridge v. Great Western R. Co.

Conditions held unreasonable.

Improper packing, in answer to loss.

Simons v. Great Western R. Co.

(*t*) *Beal v. South Devon R. Co.*, 29 L. J. (Exch.) 441; 5 H. & N. 875, affirmed in Exch. Ch., 12 Weekly Rep. 1115; 11 L. T. (N. S.) 184; 34 L. J. (Exch.).

(*u*) *McCance v. L. and N. W. R. Co.*, 31 L. J. (Exch.) 65; 7 H. & N. 477; 34 L. J. (Exch.). The declaration of value was held to be no part of the contract. It was also held that payment of money into

court admitted the unqualified contract declared upon.

(*x*) *Harrison v. London, Brighton and S. C. R. Co.*, 31 L. J. (Q. B.) 113; 2 Best & S. 152, reversing S. C. *ibid.* 122; 29 L. J. (Q. B.) 209. See also *Great Western R. Co. v. Toorner*, 11 Weekly Rep. 464.

(*y*) *Aldridge v. Great Western R. Co.*, 33 L. J. (C. P.) 161; 15 C. B. (N. S.) 582.

Liabilities of Companies as Carriers under Railway and Canal Traffic Act, 1854.

Horses to be carried at owner's risk.

M'Manus v. Lancashire and Yorkshire R. Co.

Extraordinarily hazardous goods to be insured.

Peck v. North Staffordshire R. Co.

Company not liable for "empties."

Aldridge v. Great Western R. Co.

Overcarriage.

Allday v. Great Western R. Co.

Protection afforded by the Carriers Act, 11 Geo. 4 & 1 Will. 4, c. 68.

not entitled to look through the whole of the regulations, some of which are not relied on this case, to see if any of them can be considered unjust or unreasonable (z)."

"This ticket is issued subject to the owner's undertaking all risk of conveyance, loading and unloading whatsoever, as the company will not be responsible for any injury or damage (howsoever caused) occurring to live stock of any description travelling upon the Lancashire and Yorkshire Railway, or in their vehicles," was held unreasonable, as it professed to protect the defendants from responsibility for all loss, though occasioned by their own negligence or misconduct (a).

"That the company shall not be responsible for the loss of or injury to any marbles, musical instruments, toys or other articles, which from their brittleness, fragility, delicacy or liability to ignition are more than ordinarily hazardous, unless declared and insured according to their value (b)."

"The company will not be answerable for the loss or detention of or damage to wrappers or packages of any description charged by the company as 'empties' (c)."

"The company are not to be answerable for any consequences arising from overcarriage, detention or delay in or in relation to the conveying or delivery of the said animals, however caused (d)."

III. *Protection afforded by the Carriers Act, 11 Geo. 4 & 1 Will. 4, c. 68.*

The Carriers Act, after reciting that, by reason of the frequent practice of bankers and others, of sending by the public mails, stage-coaches, wagons, vans and other public conveyances by *land* for hire, parcels and packages containing money, bills, notes, jewellery, and other *articles of great value in small compass* (e), much valuable property is rendered liable to depredation, and the responsibility of mail contractors, stage-coach proprietors, and common carriers for hire, is greatly increased; and that, through the frequent omission by persons sending such parcels and packages to notify the value and nature of

(z) *Simons v. Great Western R. Co.*, 26 L. J. (C. P.) 25; *Garton v. Bristol and Exeter R. Co.*, 30 L. J. (Q. B.) 273; 1 Best & S. 112.

(a) *M'Manus v. Lancashire and Yorkshire R. Co.*, 28 L. J. (Exch.) 353; 4 H. & N. 327; reversing S. C. 27 L. J. (Exch.) 201; 2 H. & N. 693. See also *M'Cance v. L. and N. W. R. Co.*, 31 L. J. (Exch.) 65; 7 H. & N. 477; 34 L. J. (Exch.); *Gregory v. West Midland R. Co.*, 33 L. J. (Exch.) 155, acc. And see *Lloyd v. Limerick and Waterford R. Co.*, in Q. B., Ireland, 9 L. T. 89, where it was held that, where conditions are in

the alternative, if either is unreasonable, both are so.

(b) *Peck v. North Staffordshire R. Co.*, 32 L. J. (Q. B.) 241; 10 H. L. C. 473.

(c) *Aldridge v. Great Western R. Co.*, 33 L. J. (C. P.) 161; 15 C. B. (N. S.) 582.

(d) *Allday v. Great Western R. Co.*, 13 Weekly Rep. 43.

(e) The enacting part of sect. 1 goes beyond the preamble and mischief here recited, therefore a carrier is not liable for the loss of a large looking glass, unless the value is declared and the increased charges paid. *Owen v. Burnett*, 2 Cr. & M. 357.

*Protection
afforded by the
Carriers Act,
11 Geo. 4 & 1
Will. 4, c. 68.*

the contents thereof, so as to enable such mail contractors, stage-coach proprietors, and other common carriers, by due diligence to protect themselves against *losses* (*e*) arising from their legal responsibility, and the difficulty of fixing parties with knowledge of notices published by such mail contractors, stage-coach proprietors, and other common carriers, with the intent to limit such responsibility, they have become exposed to great and unavoidable risks, and have thereby sustained heavy losses; it therefore enacts, by sect. 1, that no mail contractor, stage-coach proprietor, or other common carrier by land for hire, shall be liable for the *loss* (*e*) of or injury to any article or articles, or property, of the descriptions following, (that is to say,) gold or silver coin of this realm, or of any foreign state, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or time-pieces of any description, trinkets (*f*), bills (*h*), notes of the Governor and Company of the Banks of England, Scotland, and Ireland respectively, or of any other Bank in Great Britain or Ireland, orders, notes or securities for payment of money (*h*). English or foreign stamps, maps (*i*), writings (*k*), title-deeds (*l*), paintings (*m*), engravings (*n*), pictures (*o*), gold

Carriers not to be liable for loss of certain goods above the value of 10*l.*, unless value declared and increased charge paid.

(*e*) As to the meaning of the word "loss," see *Hearn v. London and South-Western R. Co.*, 10 Exch. 801.

(*f*) In *Davey v. Mason*, Car. & M. 45, it was held that an eyeglass and a gold chain attached were not "trinkets." But the ruling of Lord Abinger, C. B., in that case was disapproved of by the Court of Exchequer in *Hart v. Baxendale*, 6 Exch. 769, though that does not appear in the report. See per Willes, J., in *Bernstein v. Baxendale*, 28 L. J. (C. P.) 267, in which case it was held that, "with respect to shirt-pins, bracelets, gilt rings, brooches, tortoiseshell portmonnaies and smelling-bottles, there is a distinction between some of these articles which are used as ornamental to the dress, and others which do not constitute any portion of the dress, and are only occasionally produced, but which, when so produced, are of an ornamental character. The first of these classes, such as *shirt-pins, bracelets, rings and brooches*, properly come within the definition of trinkets. I think that their object is not utility, but essentially ornament; but even supposing their main object to be that of forming some part of the dress, still, if they are intended to be, as these clearly are, ornamental to the apparel, they are, I think, trinkets. There is more difficulty in dealing with the other portion of these articles, which are not always exhibited, but only produced occasionally, that is, when wanted: these are the *portmonnaies and glass smelling-bottles*. I think that, although these may be articles of use and of necessity, yet if, by the superaddition of so much ornament, there is given to them such a character as to make their main object ornament,

they are trinkets. The intention of this act is to protect carriers of articles of small bulk, but of considerable value; and therefore, if the articles are open to such a construction as to bring them within the act, we ought to adopt that construction. The *fusee-boxes of German silver* cannot, however, I think, fall within the definition of trinkets. They are made of plain materials, and the main, indeed, almost the sole purpose to which they can be applied, is the use for which they were evidently intended: these are clearly articles of use and not ornament, and are not trinkets." Per Cockburn, C. J., *ibid.* In *Attorney-General v. Harley*, 5 Russ. 173; S. C. 7 L. J. (Chan.) 31, *ivory fans* were found by the Master to be trinkets. In *Smith v. London, Brighton and S. C. R. Co.*, 7 C. B. 783, a plea under this section was held bad for uncertainty.

(*h*) An accepted but not drawn bill is not within the act. *Stoessinger v. South-Eastern R. Co.*, 3 E. & B. 549. A security is an instrument which may be put in suit, *ibid.*; and see *Goldsmid v. Hampton*, 27 L. J. (C. P.) 286.

(*i*) *Wyld v. Pickford*, 8 M. & W. 443.

(*k*) Writings, silks, furs, lace; *Piancini v. London and South Western R. Co.*, 18 C. B. 226.

(*l*) *Hearn v. London and South-Western R. Co.*, 10 Exch. 793.

(*m*) Artists' pencil sketches; *Mytton v. Midland R. Co.*, 28 L. J. (Exch.) 385; 4 H. & N. 615.

(*n*) *Boys v. Pink*, 8 C. & P. 361.

(*o*) *Behrens v. Great Northern R. Co.*, 30 L. J. (Exch.) 153; 6 H. & N. 366; 31 L. J. (Exch.) 299; 7 H. & N. 950.

*Protection
afforded by the
Carriers Act,
11 Geo. 4 & 1
Will. 4, c. 68.*

Sect. 1.

or silver plate or plated articles, glass (*p*), china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials (*q*), furs (*r*), or lace, or any of them, contained in any parcel or package which shall have been delivered, either to be carried for hire, or to accompany the person of any passenger in any mail or stage-coach or other public conveyance, when the value of such article or articles, or property aforesaid, contained in such parcel or package shall exceed the sum of 10*l.*, unless, at the time of the delivery thereof at the office, warehouse, or receiving-house of such mail contractor, stage-coach proprietor, or other common carrier, or to his, her or their book-keeper, coachman or other servant, for the purpose of being carried, or of accompanying the person of any passenger as aforesaid, the value and nature of such article or articles, or property, shall have been declared by the person or persons sending or delivering the same (*s*), and such increased charge as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package.

Sect. 2.
When parcel delivered, an increased charge may be demanded.
Notice to be stuck up.

By sect. 2 (*t*), when any parcel or package, containing any of the articles above specified, shall be so delivered, and its value and contents declared as aforesaid, and such value shall exceed the sum of 10*l.*, it shall be lawful for such common carrier, &c., to demand and receive an increased rate of charge, to be notified* by some notice affixed in legible characters in some public and conspicuous part of the office, &c., stating the increased rates of charge required to be

(*p*) Looking-glass, *supra*, 510, note (*e*).

(*q*) In *Davey v. Mason*, *supra*, note (*f*), Lord Abinger ruled that silk dresses made up for wearing are not "silks." But in *Hart v. Baxendale*, *supra*, note (*f*), the Court of Exchequer intimated that silk hose were within the statute, and that the ruling of Lord Abinger in *Davey v. Mason* could not be sustained. In *Bernstein v. Baxendale*, *supra*, note (*f*), it was held that silk is not the less silk because it is made up, and therefore a *silk guard* is within the meaning of the act. See also *Machu v. London and South-Western R. Co.*, 2 Exch. 415, post, 514, note (*a*); *Butt v. Great Western R. Co.*, 11 C. B. 140. In *Brunt v. Midland R. Co.*, 33 L. J. (Exch.) 187, elastic silk web was held to be within the act.

(*r*) Hat bodies, made partly of fur and partly of wool, are not "furs." *Mayhew v. Nelson*, 6 Car. & P. 58. And see *supra*, note (*k*).

(*s*) It is not sufficient that the carrier has a conviction in his mind as to the contents of a box, but there must be an express formal declaration of the value made by the consignor, otherwise the carrier is not liable. *Boys v. Pink*, 8 C. & P. 363. This declaration must be made whether the goods are delivered at the office of the carrier, the sender's house, on the road, or anywhere

else. *Baxendale v. Hart*, 6 Exch. 769; 16 Jur. 126; 21 L. J. (Exch.) 123, in the Exchequer Chamber, overruling the decision in the court below. *Hart v. Baxendale*, 20 L. J. (Exch.) 338. It is said by the Court of Error, "We think that the act of Parliament requires the *person who sends the goods to take the first step* by giving that information to the carrier which he alone can give, and that if the sender does not take that first step, then he cannot maintain this action by the force of the first section, which expressly says, that the carrier shall not be liable unless the declaration is made. Such declaration, when made, will lead to other consequences; the carrier will know what he is to have more, according to the tariff which he has stuck up in his office; if that sum is paid and the goods are lost, then of course he would be liable; on the other hand, if he refuses to give a receipt, as provided by the statute, or has omitted to comply with any provision of that kind on his part to be performed, he would lose the protection given by the act."

(*t*) A railway company may demand an additional charge for carrying cattle of a greater value than the amount prescribed by 17 & 18 Vict. c. 31, s. 7, and the notice must be given under the above section of the act. See ante, 506.

paid over and above the ordinary rate of carriage, as a compensation for the greater risk and care to be taken for the safe conveyance of such valuable articles; and all persons sending or delivering parcels or packages containing such valuable articles as aforesaid at such office shall be bound by such notice (*u*), without further proof of the same having come to their knowledge.

*Protection
afforded by the
Carriers Act,
11 Geo. 4 & 1
Will. 4, c. 68.*

By sect. 3, when the value shall have been so declared, and the increased rate of charge paid, or an engagement to pay the same shall have been accepted as hereinbefore mentioned, the person receiving such increased rate of charge, or accepting such agreement, shall, if thereto required, sign a receipt for the package or parcel, acknowledging the same to have been insured, which receipt shall not be liable to any stamp duty; and if such receipt shall not be given when required, or such notice as aforesaid shall not have been affixed, the common carrier, &c., shall not have or be entitled to any benefit or advantage under this act, but shall be liable and responsible as at the common law, and be liable to refund the increased rate of charge.

Receipt to be
signed;

Or carrier to lose
benefit of this
act.

By sect. 4, no public notice or declaration hereafter to be made shall be deemed or construed to limit, or in anywise affect, the liability at common law of any such common carriers, &c., for or in respect of any articles or goods to be carried and conveyed by them, but all such common carriers, &c., shall be liable, as at the common law, to answer for the loss of, or any injury to, any articles and goods in respect whereof they may not be entitled to the benefit of this act, any public notice or declaration by them made and given contrary thereto, or in anywise limiting such liability, notwithstanding (*x*).

Public notices
not to limit
liability.

By sect. 5, for the purposes of the act, every office, warehouse, or receiving-house (*y*), which shall be used or appointed by any common carrier, &c., for the receiving of parcels, shall be deemed the receiving-house, &c., of such common carrier, &c.; and any one or more of such common carriers, &c., may be sued, and no action shall abate for want of joining any co-partner, &c.

Every office, &c.
a receiving house.

By sect. 6, no special contract between any common carriers, &c., and other parties, shall be affected by the act (*z*).

Special contracts
not affected.

By sect. 7, where any parcel or package shall have been delivered

Parties entitled

(*u*) But the carrier must still demand the increased charge, or he will be liable. *Behrens v. Great Northern R. Co.*, 30 L. J. (Exch.) 153; 6 H. & N. 366; 31 L. J. (Exch.) 299; 7 H. & N. 950.

(*x*) See *Hinton v. Dibbin*, 2 Q. B. 646. But if a printed note or ticket is given or shown to a party who brings goods for conveyance, a special contract is thereby constituted, and this section does not apply to such a case. See ante, 505, note (*t*), and *Walker v. North Midland R. Co.*, 23 L. J.

(Q. B.) 73. See also ante, 507, as to the conditions of the contract being reasonable.

(*y*) As to what constitutes a receiving house, see *Syms v. Chaplin*, 5 A. & E. 634; and see ante, 512, note (*s*).

(*z*) See ante, 505, note (*t*). Whether a carrier is not bound to carry without a special contract, if the sender of the goods tender the price of the carriage of the goods, see *Carr v. Lancashire and Yorkshire R. Co.*, 21 L. J. (Exch.) 261; 7 Exch. 707.

Protection
afforded by the
Carriers Act,
11 Geo. 4 & 1
Will. 4, c. 68.

to damages to
recover back in-
creased charges.

Not to protect
felonious acts.

Carriers not
bound by decla-
ration of value.

at any such office, and the value and contents declared as aforesaid, and the increased rate of charges been paid, and such parcel or package shall have been lost or damaged, the party entitled to recover damages in respect of such loss or damage shall also be entitled to recover back such increased charge so paid as aforesaid.

By sect. 8, nothing in this act shall be deemed to protect such common carrier, &c., from liability to answer for loss or injury arising from the felonious acts of any servant, &c., in his employ, nor to protect any such servant from liability for any loss or injury occasioned by his or their own personal neglect or misconduct (a).

By sect. 9, such common carriers, &c., shall not be concluded as to the value of any such parcel or package by the value so declared as aforesaid, but shall be entitled to require from the party suing proof of the actual value, by ordinary legal evidence, and shall be liable to such damages only as shall be proved as aforesaid, not exceeding the declared value, together with the increased charges (b).

(a) *Machu v. London and South-Western R. Co.*, 2 Exch. 415; 17 L. J. (Exch.) 271; 12 Jur. 501, is a decision on this section of great importance to railway companies. The action was brought to recover 150*l.*, the value of a bale of silk. It appeared that the plaintiff was a silk manufacturer at Bunhill-row, London, and the bale had been delivered to the defendants, at their office at the Andover-road Station, to be carried to the above address. The value of the bale was not declared when it was delivered, and the ordinary charge only was paid. The bale was placed in a van, under the care of one Johnson, on its arrival at the Vauxhall Station of the company, and a delivery ticket was sent, accompanied with a notice from the company, that they would not be liable for certain articles, including silk, above the value of 10*l.*, unless the value should be declared and the increased charge paid, and with the following notice:—"The company are not responsible for any parcel above the value of 10*l.*, unless declared as such at the time of booking, and entered and paid for accordingly." The bale was stolen by Johnson, on the road between the station and its destination. Johnson was in the employ of Chaplin and Horne, who were employed by the defendants to carry goods for them; but it did not appear under what precise contract. It was thereupon contended by the defendants, that Johnson was not a servant of the defendants, and in their employ, within the meaning of the 8th section of the above act; but a verdict was found for the plaintiff; and upon a motion to enter a verdict for the defendants, Lord Cranworth said, "The statute must be construed with respect to this company as it would have been under the old system. The question then arises, are the company liable

for this felonious act? They would undoubtedly be liable, unless the statute has limited their liability. The act says that carriers shall not be liable for goods of this description unless an insurance price be paid; but then is Johnson a book-keeper, porter, or other servant in the employ of the company, within the meaning of the 8th section? I think he is. The company defend themselves on the ground that the person who stole the goods was not their servant. It has been contended that no one is a servant of a carrier, within the meaning of that section, unless he be actually hired, retained, and paid by him. I do not, however, see how such a construction can possibly be put upon that section. The legislature not only contemplated that a carrier might himself carry the goods delivered to him, but that he might hand them over to another person to carry. If they were stolen by himself, he of course would not be protected; neither do I think he would if the person whom he had employed as a substitute were to steal them. I therefore think that Chaplin and Horne were servants of the company, within the meaning of the 8th section, and that every person was so, who was directly or indirectly employed by them to do what they had contracted to do by themselves, or by others under them." See also *Hinton v. Dibbin*, 2 Q. B. 646; *Butt v. Great Western R. Co.*, 11 C. B. 140; *G. W. R. Co. v. Rimell*, 27 L. J. (C. P.) 201; *Metcalf v. London, Brighton and S. C. R. Co.*, 27 L. J. (C. P.) 205. Mere suspicion of felony is not sufficient. Evidence must be given sufficient to convict some one or more of the servants of felony, *ibid.* 333.

(b) Where the evidence for the plaintiff showed only circumstances of suspicion against the defendant's porter, but the defendant did not call the porter to prove that

By sect. 10, in all actions brought against such common carriers for loss, &c., whether the value of such goods shall have been declared or not, the defendants may pay money into court, as in any other action.

*Protection
afforded by the
Carriers Act,
11 Geo. 4 & 1
Will. 4, c. 68.*

Money may be
paid into court.

The object of the above act is two-fold; first, that the carrier receiving the article may be apprised of its nature, in order that he may give it a proportionate degree of protection; and secondly, that as he incurs an additional danger and risk, he should have an increased compensation (c). In regard to the general effect of the act, it has been observed (d),—1st. That it relates solely to carriers by land: 2nd. That it extends to the particular articles enumerated, even although they do not come within the words of the preamble as being articles “of great value in small compass” (c); but that a parcel containing such articles is within the act only where, at the time of their being delivered to the carrier (e), their aggregate value exceeds 10*l.*: 3rd. That where the nature and value of the goods have been declared by the sender, the statute exempts the carrier from his common law responsibility as to *such* goods, *only* in the event of his affixing a public and conspicuous notice in his receiving office, notifying the extra charge for carrying such valuable articles (f); or where there is a special contract: 4th. That, although such notice be affixed, the carrier is not responsible for the loss of any goods of the description mentioned, unless the value and nature thereof be in the first instance declared by the sender, and that, whether the goods are delivered at the office of the carrier or at the sender’s house, or on the road or elsewhere, nor where such notice is affixed unless the increased rate of charge for carriage be paid to, or an agreement to pay it be accepted by the carrier. And on this branch of the statute it has been held, *first*, that to entitle a party to recover for the loss of, or for any injury to such articles, he must give *express* notice to the carrier of the value and nature thereof (g); and *secondly*, that, in cases within the act, if the value of the goods be not declared, and the vendor do not pay or engage to pay the increased charge, [if demanded (h),] the carrier is not liable for their loss, although it happens by the gross negligence of his servants (i). But if the carrier [do not demand any increased charge when informed of the value

he did not steal the parcel which was the subject of the action, and the verdict was found for the plaintiff, a new trial was refused. *Boyce v. Chapman*, 2 Bing. N. C. 222; 1 Hodges, 338.

(c) *Owen v. Burnett*, 2 Cr. & M. 353.

(d) Chitty on Contracts, 6th ed. 436.

(e) See *Stoessiger v. South-Eastern R. Co.*, 3 E. & B. 549.

(f) See *Baxendale v. Hart*, 6 Exch. 769, 789.

(g) *Ibid.* And see *Boys v. Pink*, 8 C. & P. 361.

(h) *Behrens v. Great Northern R. Co.*, 30 L. J. (Exch.) 153; 6 H. & N. 366; 31 L. J. (Exch.) 299; 7 H. & N. 950.

(i) *Hinton v. Dibbin*, 2 Q. B. 646, overruling, on this point, *Owen v. Burnett*, *ubi supra*.

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and nature of the goods (*l*), or refuse on demand to give a receipt for the goods and extra charge, this will deprive him of the protection of the act (*m*): 5th. That the statute does not protect the carrier from any loss arising from the felonious act of any servant in his employ (*n*); and as to this, it is held, *first*, that to render the carrier liable it is [necessary to give such evidence as would convict some one or more of the carrier's servants of felony (*o*);] and *secondly*, that where a common carrier enters into a sub-contract with other parties with respect to the carriage of goods which he has undertaken to carry, the servants employed by the latter are "servants" in the employ of the carrier within the true meaning of the statute (*p*): 6th. That as to all goods *not specifically mentioned* in the act, and as to goods of the description therein mentioned when the value thereof is not above 10*l.*, the carrier's *common law* liability remains; even *although such notice be given*, or any public *notice* or declaration be made or given by the carrier, with the intention of limiting his liability with reference thereto: 7th. That the act does not preclude the parties from entering into a *special contract*, as to the conveyance of goods of any description or value (*q*): 8th. It seems that if the loss or injury be occasioned by the *personal neglect or misconduct* of the coachman, guard, book-keeper or other servant of the carrier, in a case in which the carrier himself is not responsible, such coachman, &c. may be sued by the owner of the goods for the consequent damage (*r*). And *lastly*, the words of the statute being, that in the cases therein mentioned the carrier shall not be liable "*for the loss of or injury to goods*," unless their value be declared and an increased rate of charge paid or agreed to be paid for the carriage thereof; this does not protect the carrier from loss or damage occasioned to the owner of the goods by the *delay* of the former in forwarding them to their destination (*s*), or if he omit to forward the goods (*t*), or if he forward them by another conveyance than that agreed upon (*u*), or send them beyond their place of destination (*x*), or by an unusual route (*y*), or generally in any case where the damage complained of is occasioned by the carrier's *misfeasance* (*z*).

(*l*) *Supra*, note (*h*).

(*m*) Sect. 3.

(*n*) Sect. 8. *Bradley v. Waterhouse*, M. & M. 154; S. C., 3 C. & P. 318.

(*o*) *Metcalfe v. London, Brighton and S. C. R. Co.*, 27 L. J. (C. P.) 205. And see ante, 514, note (*b*).

(*p*) *Machu v. London and South-Western R. Co.*, 2 Exch. 415.

(*q*) Sect. 6.

(*r*) Sect. 8.

(*s*) *Hearn v. London and South-Western R. Co.*, 10 Exch. 793.

(*t*) *Garnett v. Willan*, 5 B. & Ald. 61.

(*u*) *Sleat v. Fagg*, *ibid.* 342.

(*x*) *Bodenham v. Bennett*, 4 Price, 31.

(*y*) See *Davis v. Garrett*, 4 Bing. 716. And so it would be if the goods were delivered to a wrong person. See *Lyon v. Mells*, 5 East, 428; *Brook v. Pickwick*, 4 Bing. 218; 12 Moore, 447; *Birkett v. Willan*, 2 B. & Ald. 356; *Langley v. Brown*, 1 M. & P. 583; *Stephenson v. Hart*, 1 M. & P. 357; 4 Bing. 476.

(*z*) *Hinton v. Dibbin*, 2 Q. B. 646. And as to the damages recoverable against a carrier for non-delivery generally, see *Black v. Baxendale*, 1 Exch. 410. See also *Hadley v. Baxendale*, 9 Exch. 341, and further on this subject, post, 521.

The benefit of this act, with respect to articles of the description mentioned in sect. 1, is, as we have already seen, expressly reserved to railway companies by the last proviso in sect. 7 of the Railway and Canal Traffic Act, 1854 (a).

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afforded by the
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11 Geo. 4 & 1
Will. 4, c. 68.*

IV. *The Rights and Liabilities of Railway Companies as Carriers of Goods.*

With respect to the duties of carriers, it is laid down that if a carrier professes to carry all sorts of goods, it is his duty to receive and carry all goods offered for carriage. This is the result of his public employment as a carrier; and, according to the custom of the realm, if he will not carry goods for a reasonable compensation, he will be liable to an action, unless there is a reasonable ground for the refusal. But he is only bound to carry goods according to the profession which he has made to the public (b). Thus a railway company must carry goods beyond the limits of their own railway, and even to places out of the realm, if they profess to carry such goods (c). So, if a company profess to carry coals or other merchandize on their railway, they are required to carry the coals or merchandize of all persons who may bring them for carriage, provided there are carriages and other necessary conveniences to enable them to do so: but they are not obliged to supply a larger number of waggons than they are in the habit of using. The same rule is applicable to the case of passengers; for, at common law, a carrier of passengers could only be compelled to carry them if he had room in his carriage (d). In *Johnson v. Midland R. Co.* (e), Lord Wensleydale said:—

*Carriers bound to
carry according
to their public
profession.*

*Johnson v. Mid-
land R. Co.*

“A carrier may profess to carry light goods only, and then he cannot be compelled to carry heavy goods; or he may say that he will carry from Manchester to London, and not from the intermediate stations, and then he cannot be made to carry goods from those places; but as soon as he has publicly professed to carry in any particular manner, and so long as he does so, he is bound to carry the goods of any one, if he has room in his conveyance, and the price of the carriage be tendered when the goods are offered. Here, however, there has been no public profession on the part of the company, that they will carry coals from Melton Mowbray to Oakham. Nor, indeed, would the action lie in this case, even if there were such an implied contract with the public, because it does not appear that the company had conveniences for carrying coal from Melton Mowbray to Oakham. As to the

(a) Ante, 506.

(b) *Oxlade v. North-Eastern R. Co.*, 15 C. B. (N.S.) 680. As to how far a railway company are bound by their time tables, see *Denton v. Great Northern R. Co.*, 5 E. & B. 860; 25 L. J. (Q. B.) 129, post.

(c) *Crouch v. L. and N. W. R. Co.*, 23 L. J. (C. P.) 145; 14 C. B. 255.

(d) *Lovett v. Hobbs*, 2 Show. 428.

(e) 18 L. J. (Exch.) 366; 4 Exch. 367; *Carr v. Lancashire and Yorkshire R. Co.*, 7 Exch. 712; *Hearn v. London and South-Western R. Co.*, 10 Exch. 799; *Denton v. Great Northern R. Co.*, 5 E. & B. 863; 25 L. J. (Q. B.) 129; *Hales v. L. and N. W. R. Co.*, 32 L. J. (Q. B.) 292; 4 B. & S. 66.

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riers of Goods.*

*Johnson v. Mid-
land R. Co.*

May relinquish
carrying business.

proposition, that the liability arises from the statutes under which the defendants are empowered to act, and that, when they once become carriers, they are bound to carry all kinds of goods from and to every station on the line, it appears to me that that proposition is not made out. There might have been great ground for that proposition, if the acts had contained a prohibition to all other persons carrying on a like business on the line. But, on the contrary, the acts show that the public have a right to carry goods on a railway if they please. Practically, no doubt, that right has been found to be useless. We must, however, look, not to the practical effect, but to the meaning of the legislature; and I am of opinion, that, under this act, if the company become carriers, there is no obligation on them to take upon themselves the duties of carriers altogether, and on every part of their line, but they may confine their carrying to any part to which they choose to limit themselves, and they may afterwards relinquish the business if they please, though it is not necessary to determine that point now (*f*). I am of opinion that the 86th section of the Railway Clauses Act enables, but does not compel, the company to act as carriers."

Alderson, B., added:—

"Section 86 appears to me to be clearly permissive. It is admitted to be so to a certain extent: that it does not compel the company to become carriers; but it is contended, that, if they have once become carriers, it then imposes on them the obligation of carrying all goods from every part of the line to every other part. But this construction is inconsistent with section 89, which says 'that the company shall be liable only as common carriers.'"

The cases also show that if a carrier refuses to take charge of goods, because his coach is full (*g*), or because the goods are of a

(*f*) In *Hare v. L. and N. W. R. Co.*, 30 L. J. (Ch.) 823; 2 Johns. & Hemm. 80, Wood, V. C., said, "I cannot have any doubt; I felt none before in *Lancaster and Carlisle R. Co. v. N. W. R. Co.*, 2 K. & J. 293; 25 L. J. (Ch.) 223, that there is a power in any railway company to abstain from carrying at all, if it thinks fit. I quite agree, if it becomes a carrier, it must then carry for all; it cannot carry for some and refuse to carry for others; but I am quite at a loss to discover any indication of intention in any of the acts that they should necessarily become carriers, except for the conveyance of the mails and troops, which it was thought Parliament was justified in imposing upon them. There are two indications very plain to the contrary; first, which is of course the highest indication, it is a power which is conferred, and not a direction or mandate on the part of the government, that they shall be carriers on the line; secondly, in what is called the Cheap Passenger Traffic Act (7 & 8 Vict. c. 85, post, App. 18), and through all those series of acts which provide for cheap trains, the provision is always that so long as they shall carry on the railway they shall have those cheap trains, indicating that it was probable or possible that they might themselves not become carriers. I say 'probable' for this reason: I

do not know whether any such arrangement actually exist, but I can easily conceive the proprietors of short lines of railway joining to other large lines making arrangements that they should not become carriers at all, by which the carrying should take place totally by those larger companies; the officers of the short lines not of course contravening the intention of the legislature by resigning the management of their line, but simply taking tolls under any such arrangement as they may think fit; and accordingly, whether with foresight or not, Parliament did contemplate that there might be other companies starting for using these lines, because in the Railways Clauses Act there is a clause (sect. 92), that the railway shall be free on the payment of tolls; and it was in contemplation, probably, that other companies or persons might be induced, although the difficulties which are incident to the thing have prevented such a course being taken, to become carriers upon the general line of railway."

(*g*) *Lovett v. Hobbs*, 2 Show. 428. In *Ex parte Robins*, 7 Dowl. 566, a mandamus was refused to compel a railway company to carry the goods of a particular carrier, on the ground that the general law of the land might be enforced by action.

nature, which will at the time expose them to extraordinary danger (*h*), or to a popular rage (*i*), or because they are brought at an unseasonable time (*h*); these will furnish reasonable grounds for his refusal, and will, if true, be a sufficient legal defence to a suit for the non-carriage of the goods (*l*).

The Rights and Liabilities of the Company as Carriers of Goods.

But the provisions of sect. 2 of the Railway and Canal Traffic Act, 1854, already noticed (*m*), will probably qualify the doctrine laid down in some of the cases we have been considering.

Another duty of carriers is, to take the utmost care of goods from the moment of receiving them (*n*); to carry them safely to the proper place of destination; and to make a right delivery of them there, according to the usage of trade, or the course of business (*o*). A carrier is responsible for loss by accidental fire, unless he is protected from such liability by a special contract (*p*). And a carrier is also required to obey the directions of the owner of the goods during their transit, and at any period of the transit he may have them back, unless the subsequent directions are unreasonable, as where goods have been put into a place from which they could not be removed without the greatest inconvenience, or the like (*q*).

Carriers bound to carry safely.

(*h*) By 8 & 9 Vict. c. 20, s. 105, ante, 501, post, App. 93, railway companies cannot be required to carry upon the railway, — aquafortis, oil of vitriol, gunpowder, lucifer-matches, or any other goods which, in the judgment of the company, may be of a dangerous nature; and parties sending such goods without giving notice to the company are liable to be fined. The company may also refuse to take any parcel they may suspect, or require it to be opened. But they have no general right, in every case and under all circumstances, to require to be informed of the contents of packages tendered to be carried. *Crouch v. L. and N. W. R. Co.*, 23 L. J. (C. P.) 73; 14 C. B. 255.

(*i*) *Edwards v. Sherratt*, 1 East, 604.

(*k*) *Lane v. Cotton*, 1 Ld. Raym. 652.

(*l*) Story on Bailments, 328. Where a railway company agreed with a carrier that he should carry all goods presented to him at a certain specified rate of payment, and that the agreement should continue in force for twelve months, it was held that no action would lie, although the company ceased to present goods or carriage within the twelve months. *Burton v. Great Northern R. Co.*, 9 Exch. 507; 23 L. J. (Exch.) 184. See also *Sharp v. Waterhouse*, 27 L. J. (Q. B.) 70.

(*m*) Ante, 455.

(*n*) It is sufficient to prove a delivery either to an agent of the defendant, at the usual place of receipt, or to an agent who had authority to receive them. Thus, in an action against a carrier for the loss of a parcel, where the defendant pleaded that it was not delivered to him to be carried, it was held to be sufficient to show that it

was delivered to a person and at a house where parcels were in the habit of being left for the carrier, and that it was immaterial whether this person was paid any money or not. *Burrell v. North*, 2 Car. & Kir. 680, per Erle, J.

(*o*) *Hyde v. Trent and Mersey Navigation Co.*, 5 T. R. 389. Where one of several parcels, addressed to different parties, was abstracted from a hamper, the company were held to be liable, although the hamper was made up of a number of such parcels, and if it be proved that the parcel was placed in the hamper with the others, and that the hamper was delivered at its destination securely corded, there is evidence sufficient to justify the jury in finding that the missing parcel had been stolen, in the course of transit, by the company's servants. *Crouch v. L. and N. W. R. Co.*, 2 Car. & K. 789. Where goods were forwarded to a station by another adjoining railway company, in contravention of an agreement made between the two companies, and the owner of the goods demanded the goods, and offered to pay all charges; it was decided, that on a refusal to deliver the goods to him, trover would lie to recover them. *Rooke v. Midland R. Co.*, 16 Jur. 1069. But see, as to whether trover will lie against a carrier for misdelivery of goods, *Crouch v. Great Northern R. Co.*, 11 Exch. 756.

(*p*) *Bristol and Exeter R. Co. v. Collins*, 29 L. J. (Exch.) 41; S. C., 7 H. L. C. 194.

(*q*) Thus, where a package, containing goods, was directed to a passenger, per "Ship Melbourne, Australia," and was sent by the plaintiff to the station of the defend-

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May set up title of real owner.

Common carriers who are bound to receive goods and can make no inquiry as to the ownership, are not estopped from setting up the title of the *real owner* and delivering them to him; and as they would be protected by the law against *him*, if they delivered the goods in pursuance of their employment without notice of his claim; so they are equally protected against a *pseudo* owner from whom they receive the goods, in the event of the real owner claiming them, and their being given up to him (*r*).

If the consignee refuse to receive the goods, the carrier is not bound to give notice to the consignor. He must do what is reasonable under the circumstances, and what is reasonable is a question for a jury (*s*).

Carriers liable beyond their own line.

It has been frequently decided that carriers, who have received goods to be taken to a point beyond that to which their own means of conveyance extends, are liable, as carriers, for losses beyond that point (*t*). And the same rule applies if an English railway company

ants, to be taken to London for hire, and by the practice of the defendants, goods so delivered for London were conveyed by their line to Birmingham, and thence by the L. and N. W. R., and it appeared that before the goods arrived in London the plaintiff delivered to a clerk, at the Euston Station of the L. and N. W. R., a written order, directing that they should be forwarded to Ratcliffe Highway, but the order was not complied with, and the goods were taken to the Melbourne and carried to Australia and lost, it was decided that the plaintiff was entitled to countermand the direction originally given; that the clerk at the Euston Station was an agent of the defendants, having authority to receive the countermand; and that the defendants were therefore liable for the loss occasioned by their non-compliance with the countermand. *Scotthorn v. South Staffordshire R. Co.*, 22 L. J. (Exch.) 121; 8 Exch. 341. See *Baxendale v. West Midland R. Co.*, coram Stuart, V. C., June 24, 1862, as to the right of the company to deliver goods to consignee and charge for cartage. In *L. and N. W. R. Co. v. Bartlett*, 31 L. J. (Exch.) 92; 7 H. & N. 401, it was held that, notwithstanding the contract with the consignor, the carrier may deliver the goods wherever he and the consignee agree.

(*r*) *Sheridan v. New Quay Co.*, 28 L. J. (C. P.) 58. See also *European, &c. Mail Co. v. Royal Mail Steam Packet Co.*, 30 L. J. (C. P.) 247. In *Coombs v. Bristol and Exeter R. Co.*, 27 L. J. (Exch.) 269, a plea by carriers that they had received the goods from A. and had settled with him for the loss of them, was held bad.

(*s*) *Hudson v. Baxendale*, 27 L. J. (Exch.) 93. See also *Crouch v. Great Western R. Co.*, 26 L. J. (Exch.) 418.

(*t*) *Muschamp v. Lancaster and Preston*

R. Co., 8 M. & W. 421. In that case Lord Cranworth said, "I think the construction we are putting on the agreement is not only consistent with law, but is the only one consistent with common sense and the convenience of mankind. What I told the jury was only this, that if a party brings a parcel to a railway station—which, in this respect, is just the same as a coach office, knowing at the time that the company only carry to a particular place, and if the railway company receive and book it to another place to which it is directed, *prima facie*, they undertake to carry it to that other place. That was my view at the trial, and nothing has occurred to alter my opinion. As to the case which has been put, of a passenger injured on the line of railway beyond that where he was originally booked, I suppose it is put as a *reductio ad absurdum*; but I do not see the absurdity. If I book my place at Euston Square, and pay to be carried to York, and am injured by the negligence of somebody between Euston Square and York, I do not know why I am not to have my remedy against the party who so contracted to carry me to York. But at all events, in the case of a parcel, any other construction would open the door to incalculable inconveniences. You book a parcel, and on its being lost, you are told that the carrier is responsible only for one portion of the line of road. What would be the answer of the owner of the goods?—'I know that I booked the parcel at the Golden Cross for Liverpool, and my contract with the carrier was to take it to Liverpool.' All convenience is one way, and there is no authority the other way." Subsequent cases have fully supported the rule thus clearly laid down. See *Watson v. Ambergate R. Co.*, 15 Jur. 448; *Scotthorn v. South Staffordshire*

profess to carry goods beyond the limits of their railway to Scotland, and they are to be treated as common carriers throughout the whole journey (*u*). The same principle has been applied to passengers (*x*). But this liability would not apply where the company had by one of the conditions of their contract of carriage stipulated for an exemption from it (*y*).

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Another point is, at what *time* the carrier is bound to make a delivery of the goods? The general answer is, that he is bound to deliver the goods within a reasonable time (*z*), under ordinary circumstances, but he is not bound to use extraordinary efforts, or incur extraordinary expense in order to surmount obstructions caused by the act of God. If a snowstorm occurs which makes it impossible to carry the goods, except by extraordinary efforts involving additional expense, a carrier is not bound to use such means and to incur such expense (*a*). If, however, the party sending the goods stipulate that the carrier shall forward them the same evening, a special contract is created, and the carrier may be sued for a breach of it (*b*).

A carrier is, in all cases, entitled at common law to demand the price or hire of carriage, before he receives the goods; and, if it is not paid, he may refuse to take charge of them. But it is not necessary, in order to support an action for refusing to carry, that the satisfaction should have been tendered, in the strict sense of that term as applied to antecedent debts. It is sufficient, if the consignor was ready and willing to deal for ready money, and notifies that readiness and willingness to the carrier; the money is not required to be paid down until the carrier receives the goods which he is bound to carry (*c*). If the price of carriage is not paid before the goods are received, the carrier cannot sue for such price till they are delivered (*d*).

R. Co., 22 L. J. (Exch.) 121; 8 Exch. 341; *Collins v. Bristol and Exeter R. Co.*, 11 Exch. 790, upheld in House of Lords, 29 L. J. (Exch.) 51; 7 H. L. C. 194 (reversing the decision in the Exchequer Ch., 26 L. J. (Exch.) 103); *Wilby v. West Cornwall R. Co.*, 27 L. J. (Exch.) 181; 2 H. & N. 703; *Coron v. Great Western R. Co.*, 29 L. J. (Exch.) 165. See also *Keys v. Belfast, &c. R. Co.*, 8 Ir. C. L. R. 167; 9 H. L. C. 556; 8 Jur. (N. S.) 367.

(*u*) *Crouch v. L. and N. W. R. Co.*, 23 L. J. (C. P.) 73; 14 C. B. 255.

(*x*) *Birkett v. Whitehaven Junction R. Co.*, 28 L. J. (Exch.) 348; 4 H. & N. 730; *Mytton v. Midland R. Co.*, 28 L. J. (Exch.) 385; 4 H. & N. 615; *Blake v. Great Western R. Co.*, 31 L. J. (Exch.) 346; 7 H. & N. 987.

(*y*) See *Aldridge v. Great Western R. Co.*, 33 L. J. (C. P.) 161; 15 C. B. (N. S.) 582.

(*z*) *Raphael v. Pickford*, 5 Man. & G. 551; 2 Dowl. N. S. 916; *Hales v. L. and N. W. R. Co.*, 32 L. J. (Q. B.) 292.

(*a*) *Briddon v. Great Northern R. Co.*, 27 L. J. (Exch.) 51. And see further as

to what is the act of God, *Oakley v. Portsmouth and Ryde Steam Packet Co.*, 11 Exch. 618; *Great Western R. Co. of Canada v. Fawcett*; *Same v. Braid*, 9 Jur. (N. S.) 339; 1 Moore P. C. (N. S.) 101.

(*b*) See *Pickford v. Grand Junction R. Co.*, 12 M. & W. 766, where the defendants were sued for not forwarding certain crates of pork on the evening of their delivery. As to the proper mode of ascertaining the amount of damages, see *Black v. Baxendale*, 1 Exch. 410. The rule is, that the defendants are responsible only for the reasonable consequences of their breach of contract. *Ibid.* Where a plan and models sent to compete for a prize were lost, the proper measure of damages is the value of the labour and materials expended in making the articles, and not damages from losing the chance of obtaining the prize; the latter being too remote a ground of damages. *Lythgoe v. East Anglian R. Co.*, 15 Jur. 400.

(*c*) *Pickford v. Grand Junction R. Co.*, 8 M. & W. 372; 2 Railw. C. 592.

(*d*) *Barnes v. Marshall*, 18 Q. B. 785.

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*Hadley v. Baxen-
dale.*

Damages for non-
delivery.

With regard to the damages to which a carrier is liable for non-delivery of goods, the following rule was laid down in *Hadley v. Baxendale* (e): Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract, should be such as may fairly and reasonably be considered either arising naturally, *i. e.*, according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it. Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he at the most could only be supposed to have had in his contemplation the amount of injury which would arise generally and in the great multitude of cases, not affected by any special circumstances, from such a breach of contract. For had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case; and of this advantage it would be very unjust to deprive them. Now the above principles are those by which we think the jury ought to be guided in estimating the damages arising out of any breach of contract.

Loss of profit.

Upon this principle, where a miller sent a broken iron shaft to a carrier to be conveyed by him to a consignee as a pattern for a new shaft, and the carrier's clerk was told that the mill was stopped, and the shaft must be delivered immediately, and that a special entry, if necessary, must be made to hasten its delivery; but the delivery was nevertheless delayed an unreasonable time, in consequence of which the mill was stopped, and the miller incurred a loss of profits; it was held that such loss could not be recovered against the carrier, who had no notice that the profits of the mill would be stopped by unreasonable delay in delivering the shaft, and the loss could not be considered such a consequence of the breach of contract as could have been fairly and reasonably contemplated by both parties when they made the contract (f).

(e) 9 Exch. 341.

(f) *Hadley v. Baxendale*, 9 Exch. 341. In *Simons v. Patchett*, 26 L. J. (Q. B.) 197, Crompton, J., remarked on *Hadley v. Baxendale*:—"The curious part of that case is, that there was a most distinct notification to the carrier of the consequences that would follow the non-delivery of the shaft,

and yet the court held that those consequences could not be taken into consideration." But the rule above laid down has always been followed. See *Portman v. Middleton*, 27 L. J. (C. P.) 231; *Smeed v. Foord*, 28 L. J. (Q. B.) 178; *Hales v. L. and N. W. R. Co.*, 32 L. J. (Q. B.) 292.

And so where a railway company refused to carry at the ordinary rate packed parcels for a carrier, whereby he was obliged to send them by a more circuitous route at a greater expense, it was held that he was not entitled to recover damages for an alleged loss of business (*g*).

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Crouch v. Great Northern R. Co.
Loss of business.

So in an action for delay in delivering skins for making gloves, Keating, J., held that the plaintiff, although entitled to recover the deterioration in the value of the skins, could not recover the loss in wages paid to workmen kept idle in consequence of their non-arrival, and his ruling was upheld by the Court of Queen's Bench (*h*).

Le Peintur v. South-Eastern R. Co.
Loss of wages.

So, again, where the plaintiffs caused to be delivered bales of cotton to a railway company to be carried from Liverpool to Oldham, and instead of being delivered the following morning, which was the usual time, the cotton was not delivered for four days. The plaintiffs enquired for it at the Oldham station, both before and after the actual delivery of it to the defendants, and told the defendants' manager that the plaintiffs' mill was at a standstill on account of the non-delivery of the cotton, and that they would look to the company for compensation for the loss sustained; but the fact of the mill being at a standstill was not communicated to the defendants or their agents at Liverpool at the time the cotton was delivered to them to be carried; and in consequence of the delay a new mill of the plaintiffs was prevented working for two days and a half, and workpeople kept idle to whom plaintiffs had to pay 7*l.* wages, and the plaintiffs claimed 7*l.* 10*s.* for the profits they would have made by working their mill for the time in question; it was held by the Court of Exchequer that neither wages nor loss of profit could be recovered (*i*).

Gee v. Lancashire and Yorkshire R. Co.
Loss of profit and wages.

It has, however, been held in an action by a cap manufacturer against a railway company for damages for loss sustained by delay in delivery of cloth, by which the plaintiff lost the season for making it into caps, and so disposing of it, that although the plaintiff could not recover his loss of profits, yet the jury might take into consideration the deterioration in the marketable value of the cloth, by reason of the season having passed for making caps which the plaintiff might then have sold (*k*).

Wilson v. Lancashire and Yorkshire R. Co.
Deterioration of goods, loss of season.

The plaintiff sent hops in bags from Kent to London by the defendants' railway, for the purpose of delivery to the vendee, a hop dealer. The hops were detained by the defendants several days, and were damaged by water, and the vendee refused to accept them. The plaintiff dried the hops, but when fit for sale the price had fallen;

Collard v. South-Eastern R. Co.
Deterioration—Market value—Hops.

(*g*) *Crouch v. Great Northern R. Co.*, 11 Exch. 742.

30 L. J. (Exch.) 11; 6 H. & N. 211.

(*h*) *Le Peintur v. South-Eastern R. Co.*, 2 L. T. (N. S.) 170.

(*k*) *Wilson v. Lancashire and Yorkshire R. Co.*, 30 L. J. (C. P.) 232; 9 C. B. (N. S.) 632.

(*i*) *Gee v. Lancashire and Yorkshire R. Co.*,

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moreover the stained part of the hops deteriorated the market value of the whole, although for brewing purposes the bulk was unaffected. The plaintiff sued the company, and it was held that he was entitled to recover the difference between the market value (*l*) of the whole on the day the hops ought to have been brought to market, and the day on which they were afterwards brought to market, and was not confined to the value of the parts actually damaged, although the defendants had no notice that the hops were sent for sale and not for use; and it was also held that there was no difference between a delay occasioned by the detention of the hops in the hands of the carrier, and the delay necessary for restoring them to a marketable state when delivered by the carrier in a damaged condition (*m*).

Carriers have special property in goods.

As to the general rights of carriers, it is to be observed, that, in virtue of the delivery of the goods, they acquire a special property in them, and may maintain an action against any person who takes the goods out of their possession, or does any injury to them (*n*). This right arises from their general interest in conveying the goods, and their responsibility for any loss or injury to them during their transit.

Remedies for tolls.

We have already seen that a railway company, in addition to the remedies given by the common law, have several special powers reserved to them, to entitle them to ascertain and recover the amount of tolls due to them. Thus, the tolls must be paid as the company may direct (*o*). On default of payment of tolls a right of general lien is given, in addition to the remedy by an action at law (*p*). An account in writing of the lading of carriages must be given on pain of a penalty (*q*). Disputes concerning the amount of tolls may be settled by a justice (*r*). Lastly, in case of difference between the servants of the company and the owner, or person having charge of any carriage passing on the railway, or of any goods conveyed by such carriage, respecting the quantity or nature of such goods, the servants of the company may examine the goods (*s*).

Termination of risk.

As to the termination of the carrier's risk, it may be observed, that

(*l*) In *Rice v. Baxendale*, 30 L. J. (Exch.) 371; 7 H. & N. 96, the consignee was held entitled to recover the value of goods at the place to which they were consigned, as distinguished from the place at which they were delivered to the carrier.

(*m*) *Collard v. South-Eastern R. Co.*, 30 L. J. (Exch.) 393; 7 H. & N. 79. As to costs in cases within County Courts Acts, see *Tattan v. Great Western R. Co.*, 29 L. J. (Q. B.) 184. As to damage arising from bad packing, see *Higginbotham v. Great Northern R. Co.*, 2 Fost. & F. 796.

(*n*) 2 Wms. Saund. 47 (*e*).

(*o*) Ante, 500; 8 & 9 Vict. c. 20, s. 96, post, App. 92.

(*p*) Id. s. 97. The word "toll" in-

cludes all charges made by the company as carriers. See Interpretation Clause, post, App. 74, and see the cases ante, 498, note (*g*). In *Pegler v. Monmouthshire R. and Canal Co.*, 30 L. J. (Exch.) 249; 6 H. & N. 644, certain "terminal charges" in addition to the tolls were held illegal. As to distress for tolls under a special act, see *Field v. Newport, &c. R. Co.*, 27 L. J. (Exch.) 396; 3 H. & N. 409. See also *Homfray v. South Wales R. Co.*, Exch. Ch., June, 1862; *North v. L. and South Western R. Co.*, 32 L. J. (C. P.) 156; 8 L. T. (N. S.) 246.

(*q*) Id. ss. 98, 99, post, App. 92.

(*r*) Id. s. 100.

(*s*) Id. ss. 101, 102, post, App. 93.

the material consideration is, whether the owner of the goods has taken any exclusive possession of them, or has terminated the custody of the carrier by any act or direction which does not flow from the duty of a carrier. So long as the carrier retains the possession of the goods, or is to perform any further duty, either by custom or contract, as carrier, he is responsible for their safety. But when the transit is ended, and the delivery is either completed or waived by the owner, the responsibility of the carrier ceases (*t*).

The Rights and Liabilities of the Company as Carriers of Goods.

It may conveniently be noticed in this place, that where a railway company allowed a consignee of heavy goods the gratuitous use of a crane to put them on his truck, and in doing so the crane broke and a volunteer assisting was killed, it was held that the company were not responsible to his representatives (*u*).

Loan of crane to consignee.

V. *The Rights and Liabilities of Railway Companies as Carriers of Passengers and their Luggage.*

It is now proposed to consider the liabilities of carriers in respect of passengers: *first*, as to their luggage; and *secondly*, as to their persons.

First, as to their luggage. Passengers by railways are accustomed, as of right, to take a certain specified quantity of luggage, for which no charge in addition to the fare is made. The quantity of luggage thus allowed is in some of the early special acts particularly specified; and in all the special acts passed during and subsequent to the session 1845 the following clause as to passengers' luggage was inserted, viz., that every passenger travelling upon the railway might take with him his ordinary luggage, not exceeding a weight particularly specified, without any charge being made for the carriage thereof. The 7 & 8 Vict. c. 85, s. 6, as we have seen (*x*), also contains a provision obliging all railway companies to permit third-class passengers to take a limited quantity of luggage (*y*).

As to passengers' luggage.

(*t*) Story on Bailments, 345, and see ante, 518.

(*u*) *Blackmore v. Bristol and Exeter R. Co.*, 27 L. J. (Q. B.) 167; 8 E. & B. 1035. See also *McCarthy v. Young*, 30 Law J. (Exch.) 227; *Williams v. Jones*, 33 L. J. (Exch.) 297.

(*x*) Ante, 474.

(*y*) The weight of luggage allowed to passengers in the special acts passed 8 & 9 Vict. varies, in the case of first-class passengers from 100 lbs. to 150 lbs.; in the case of second-class passengers, from 60 lbs. to 100 lbs.; and in the case of third-class passengers, from 40 lbs. to 100 lbs. In six instances, the luggage allowed to passengers is limited in dimensions as well as in weight; and in four acts it is provided, that passengers' luggage shall be conveyed

at the risk of the company, upon the payment of a sum not exceeding two-pence for each parcel. Bigg's Collection of Special Acts, 1854 (Introd. xxviii.) In some of the early Special Railway Acts, the company are exempted from liability in respect of certain descriptions of passengers' luggage. See *Elwell v. Grand Junction R. Co.*, 5 M. & W. 669. If a passenger by Excursion Train, "no luggage allowed," takes luggage, he must pay for the carriage of it, or the company may detain it for the amount. *Rumsey v. North Eastern R. Co.*, 32 L. J. (C. P.) 244; 8 L. T. (N. S.) 666; 14 C. B. (N. S.) 641. And the company are not liable for the loss of luggage in an Excursion Train, "luggage under 60 lbs. free, at passenger's own risk." *Stewart v. L. and N. W. R. Co.*, 33 L. J. (Exch.) 199.

The Rights and Liabilities of the Company as Carriers of Passengers.

Passengers' luggage.

The doctrine seems now to be firmly established (z), that the responsibility of carriers of passengers with their luggage stands, as to the luggage, upon the ordinary footing of common carriers (a). The observations already made with reference to the liabilities of common carriers, in respect of goods carried by them, are therefore applicable in considering the extent of the liability of railway companies for the loss or injury of the luggage of passengers carried on the railway. If, therefore, the luggage of a passenger be lost, the company are liable, and it is immaterial whether there be negligence or not, and it makes no difference whether the luggage be placed in the carriage in which the passenger is seated, or in some other part of the train (b).

Richards v. London, Brighton and South Coast R. Co.

Therefore, where the plaintiff's wife and a female servant took places for London in a first-class carriage on the defendants' railway, at W. station, bringing with them a large quantity of luggage, which was weighed and the excess paid for, and on arriving at London

(z) In Story on Bailments, 324, it is said, "It has been a matter of some controversy, in what character the proprietors of stage-coaches and steam-boats, and rail-cars, are to be regarded. The more important question has been in regard to their liability for the baggage of passengers, whether it is that of common carriers, or only that of private persons engaging ordinarily for hire, that is, for due and reasonable skill and diligence in the undertaking. The general tendency of the authorities, however, has at all times been to the point, that, as to the baggage of the passengers, the proprietors are common carriers. And the doctrine seems now firmly established, both in England and America, that the responsibility of coach proprietors carrying passengers with their baggage, stands, as to their baggage, upon the ordinary footing of common carriers. Mr. Bell has deduced this as the true modern doctrine on the subject." See *Bennet v. Peninsular Steam Boat Co.*, 6 C. B. 782; 6 D. & L. 387. Pollock, C. B., however, has expressed an opinion, that the carrier in respect of such baggage undertakes no responsibility beyond that which he undertakes with respect to the passenger himself. *Stewart v. L. and N. W. R. Co.*, 33 L. J. (Exch.) 199.

(a) *Robinson v. Dunmore*, 2 Bos. & Pul. 416; *Clark v. Gray*, 6 East, 564; 4 Esp. 177; *Brooke v. Pickwick*, 4 Bing. 218. Sect. 1 of the Carriers Act expressly includes passengers' luggage, see ante, 512. See also 17 & 18 Vict. c. 31, s. 2, ante, 455.

(b) *Richards v. London, Brighton and S. C. R. Co.*, 7 C. B. 839; 6 Railw. C. 49; 18 L. J. (C. P.) 251. See whether the company are bound to deliver the luggage beyond the platform at the station. *Ibid.* If the company undertake to carry with each passenger a specified weight of lug-

gage, and a passenger brings merchandise, to be used in his way of business, packed as luggage, the company are not liable for the loss of the package. In *Great Northern R. Co. v. Shepherd*, 21 L. J. (Exch.) 114; 8 Exch. 30, Lord Wensleydale laid down the rule on this point as follows:—"There being no special contract, the defendants were only bound to carry the plaintiff and his luggage, and under that term may be comprised his clothing, and everything required for his personal convenience, and perhaps even a small present, or a book might also be included in that term; but they were certainly not bound to carry merchandise and materials intended for trade, and to be sold at a profit. Had the company, with full notice of what the passenger was carrying, chosen to treat it as luggage, they would have been responsible for the loss; but their duty as common carriers was only to carry luggage, and not merchandise or articles wholly disconnected with personal luggage. If they had had notice they might have refused to carry it without an additional payment, but they had no opportunity of acquiring this knowledge in this case. Whether this was done with any fraudulent intention it is not material to inquire, for if without any fraud the passenger has so conducted himself that the company were not apprized of the nature of what he was carrying, it is the same in effect as if a fraud had been intended." See also *Cahill v. L. and N. W. R. Co.*, 10 C. B. (N. S.) 154; 30 L. J. (C. P.) 289; 31 L. J. (C. P.) 271; *Keys v. Belfast, &c. R. Co.*, 8 Ir. C. L. R. 167; 9 H. L. C. 556; 8 Jur. (N. S.) 367. Semble, that if each passenger is allowed 56 lbs. weight of luggage, a man and his wife may carry 112 lbs. between them, although the wife's personal luggage is only 3 lbs. weight. *G. N. R. Co. v. Shepherd*, ubi supra.

Bridge Station the lady, an invalid, was assisted to a hackney coach, into and upon which the luggage was placed by servants of the company, who, upon the maid attempting to remove the small articles from the railway carriage to the coach, desired her not to trouble herself as they would see to the luggage; but upon reaching the plaintiff's residence it was discovered for the first time that part of the luggage, viz., a dressing-case, containing trinkets and jewellery, which had been placed under the seat of the railway carriage, was missing, and was not afterwards found; it was held that the company were liable, although it was contended that the goods were duly *carried*, inasmuch as they were not *delivered* (c).

The Rights and Liabilities of the Company as Carriers of Passengers.

Passengers' luggage.

Again, where a passenger took with him into the railway carriage a carpet bag containing money, and kept it in his own possession till the arrival of the train in London, and on alighting from the carriage with the bag in his hand, permitted a porter of the company to take it from him to secure a cab, and the porter having found a cab (within the station) placed the bag on the footboard and returned for other luggage of the plaintiff, when the cab disappeared and the bag and money were lost, it was held that this was a loss by the negligence of the company, for which they were responsible (d).

Butcher v. London and South-Western R. Co.

By a special act for making a railway, every passenger was to be allowed to take with him, without extra charge, his articles of clothing not exceeding a certain weight, and the company were not to be liable for the safe carriage of any articles belonging to passengers except such articles of clothing. The company under the powers of their act made regulations, by one of which passengers were required to see their luggage marked with the company's labels, and the company stated that they would not be responsible for the loss or detention of any article of luggage not so marked and properly addressed; and by another regulation, all unclaimed property found on the company's premises was to be deposited in the lost property office, and to be restored to the owner on payment of 6d. for each article. The plaintiff, a passenger, required the company's porter to label and take in the luggage van a package, consisting only of wearing apparel wrapped in a shawl, properly packed and addressed, and within the allowed weight. The porter refused, as the company had made a rule not to label shawls, but offered to put it in the carriage with the plaintiff, where it was to be under his charge. This the plaintiff objected to unless it was to be at the company's risk, but did not prevent the company putting it there or in any other part of the train. The package was left behind in consequence of such refusal to label and carry it with the rest of the luggage, and was taken by a porter to the lost property office, and refused to be restored

Munster v. South-Eastern R. Co.

(c) *Richards v. L., B. and S. C. R. Co.*,
ubi supra.

(d) *Butcher v. London and South-Western R. Co.*, 16 C. B. 13.

The Rights and Liabilities of the Company as Carriers of Passengers.

Passengers' luggage.

Midland R. Co. v. Bromley.

to the plaintiff except on payment of 6*d.* It was held that this was a wrongful act, for which the company were responsible, as they were not justified in refusing to carry the package with the responsibility of carriers (*e*).

But where a passenger by the Midland Railway from Gloucester to Bristol, on arriving at Bristol terminus told a porter that he wished to proceed by the Bristol and Exeter Railway (whose station closely adjoined that of the Midland) to Torquay, and the porter thereupon placed his portmanteau on a truck with other luggage, entered the Bristol and Exeter station with the luggage, passed down an incline from the arrival platform, crossed the rails, ascended an incline to the departure platform of the Bristol and Exeter Railway, and there was no evidence that the portmanteau was ever seen afterwards, but it never reached Torquay; it was held, that there was no evidence against the Midland R. Co. of a breach of their contract to deliver, either to the passenger or at the departure platform of the Bristol and Exeter Railway (*f*).

And it would seem that the company would not be liable for the loss of a purse, coat in use, or other like article under the personal control and in the custody of the passenger himself (*g*).

Luggage left at cloak room.

Stallard v. Great Western R. Co.

Where a passenger, having travelled up to London by the defendants' railway, left a box at the cloak room at the station, paid 2*d.* and received a ticket, on which was a condition that the defendants would not deliver up luggage deposited without the production of the ticket, and on the following day, Sunday, called with the ticket, but there was no one in attendance at the cloak room, and after waiting about some time went to another part of the station, found an attendant and so obtained his box, but was delayed forty minutes, whereby he missed another train by another railway by which he had intended to travel (the cloak room on week days was open all day, but on Sunday only a few minutes before and after trains arrived, of which however the plaintiff was not aware), it was held, in an action brought by the passenger against the railway company for damages caused by this delay, that the ticket being silent on the subject the defendants' contract was to redeliver the box within a reasonable time after reasonable demand, and that whether or not there had been unreasonable delay under the circumstances was a question for the jury and ought to be left to them (*h*).

Servant may sue for loss of his luggage.

A servant travelling with his master may have an action in his own name against the company for the loss of his luggage, although

(*e*) *Munster v. South-Eastern R. Co.*, 27 L. J. (C. B.) 308; 4 C. B. (N. S.) 676.

(*f*) *Midland R. Co. v. Bromley*, 17 C. B. 372; 25 L. J. (C. P.) 94; and see *Gilbert v. Dale*, 5 A. & E. 543, as to how far evidence of non-delivery is sufficient to fix a carrier.

(*g*) *Richards v. London, Brighton and S. C. R. Co.*, 18 L. J. (C. P.) 251. Per Lord Truro. But see *Dansey v. Richardson*, 23 L. J. (Q. B.) 228; 3 E. & B. 144.

(*h*) *Stallard v. Great Western R. Co.*, 31 L. J. (Q. B.) 137; 2 Best & S. 419.

the master took and paid for his ticket, for such an action does not depend upon contract but on the common law duty of the defendants to carry the goods safely (*i*). As in the case of a carrier of goods, a general notice limiting the liability of the company is of no avail; but the company are entitled to all the protection afforded by the Carriers Act; and special contracts may be made (*k*).

The Rights and Liabilities of the Company as Carriers of Passengers.

General notice.

Secondly, as to the persons of passengers. Carriers of passengers are not, like carriers of goods, insurers against all injuries except by the act of God or by public enemies, and their undertaking is not an undertaking absolutely to convey safely (*l*). The rule appears to be, that carriers of passengers are required to carry safely those whom they take into their coaches, as far as human care and foresight will go; consequently they are liable for the result of any accident which may arise through negligence (*m*). Thus it has been laid down, that every stage-coach proprietor impliedly undertakes that his coach shall

Passengers' persons.

Liability for negligence to Passengers.

(*i*) *Marshall v. York, Newcastle and Berwick R. Co.*, 21 L. J. (C. P.) 34; 16 Jur. 124; 11 C. B. 655. And see *Farrant v. Barnes*, 31 L. J. (C. P.) 137, where it was held that a carrier's servant might sue a person who sent a dangerous article, nitric acid, to be carried, not properly labelled, which burst and injured the plaintiff.

(*k*) See ante, 511, 513. Where by a bye-law made by a company, and allowed by a judge, in pursuance of the special acts, every passenger was allowed a specified weight of luggage free of charge, but it was also intimated "that the company will not be responsible for the care of the same, unless booked and paid for accordingly," and a passenger who had not booked her luggage lost it, it was decided that the company were liable for the loss, it not being shown that the passenger had any notice given to her of the existence of the bye-law; and *semble*, per Maule, J., that the company could not, by a bye-law, repeal their common law liability as carriers. *Great Western R. Co. v. Goodman*, 21 L. J. (C. P.) 197; 12 C. B. 313. The opinion expressed by this learned judge has been subsequently affirmed. See *Williams v. Great Western R. Co.*, 10 Exch. 15. As to the construction of a special contract with a carrier by water not to be liable for luggage unless bill of lading signed, see *Wilton v. Royal Atlantic Mail Steam Co.*, 30 L. J. (C. P.) 369; 10 C. B. (N. S.) 453.

(*l*) In some of the County Courts railway companies have been successfully sued by passengers for losses arising from delays occurring in the course of a journey, where the time mentioned in the train bill is not duly kept; see 15 Jurist, 390; 16 *ibid.* 407. It seems, however, that the company may make a special contract, by a proper notice that they will not be responsible for the due arrival of trains. See, however, 17 & 18 Vict. c. 31, s. 2, ante, 455. And see

Denton v. Great Northern R. Co., 5 E. & B. 860; 25 L. J. (Q. B.) 129, where the company were held liable for damages sustained by plaintiff in consequence of false time tables published by the company. In *Hamlin v. Same*, 26 L. J. (Exch.) 20; 1 H. & N. 408, it was held that plaintiff, who was detained a night at Grimsby on his way to Hull, in consequence of inaccurate advertisements of trains on defendants' railway, was only entitled to recover hotel expenses at Grimsby and fare to Hull next day, and no damages in respect of not being able to keep engagements at Hull and other places. And see *Warlow v. Harrison*, 29 L. J. (Q. B.) 14. Excursion tickets were issued by defendants at B., to convey passengers to L. and back, by any train advertised for that purpose, within the following fourteen days. B. was not on defendants' line of railway, but on that of another company, which joined the other line at D. Two trains a day (morning and evening) were then advertised for the conveyance back from L., in pursuance of the notice on the ticket, but B. was not mentioned in the advertisement as one of the stations at which either of these trains would stop, although D. was so mentioned. Plaintiff, who had taken one of the tickets at B., and had been conveyed to L., returned within the fourteen days by one of the evening trains, and on arriving at D. next morning, found that there was no train for B. on that day; he thereupon posted to B., and sued defendants for the expenses, which he recovered. *Hawcroft v. Great Northern R. Co.*, 16 Jur. 196.

(*m*) *Aston v. Heaven*, 2 Esp. 533; *Christie v. Griggs*, 2 Camp. 79; *Crofts v. Waterhouse*, 3 Bing. 319. As to the criminal liability of a station master for injuries caused by his negligence, see *R. v. Ledger*, 2 Fost. & F. 857; engine-driver and fireman, *R. v. Trainer*, 4 Fost. & F. 105.

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riers of Pas-
sengers.*

Liability for
negligence to
Passengers.

be sufficiently secure to perform the intended journey, and he ought to examine its sufficiency previous to such journey; and if he did not, and by the insecurity of a coach a passenger is injured, an action is maintainable against the coach proprietor for negligence, though the coach had been examined previous to the journey before the accident, and though it had been repaired at the coachmaker's only three or four days before (*n*). So, if an accident happens from a defect in the original construction of a coach, the proprietor is liable, although the defect be out of sight and not discoverable upon ordinary examination (*o*). And a railway company warrant that their rolling stock is roadworthy as far as human care and foresight can provide, and it is no answer to an action for damage sustained by a passenger through defective making or construction that the railway company employed a competent manufacturer (*p*). Where an action was brought against a railway company to recover compensation for injuries received by the plaintiff by the breaking down of a bridge over which he was passing in a passenger train, it was said that the defendants would not be liable for the accident if it could be shown that they employed an engineer fully competent to undertake the erection of the bridge, who used the best materials and adopted the best method of construction; but that negligence was not disproved merely by showing that the bridge had been constructed under the directions of an eminent engineer (*q*).

In an action against a coach proprietor for negligence, it appeared that the plaintiff became an outside passenger for hire; that there was luggage on the roof of the coach, and no iron railing between the luggage and the passengers; and that the plaintiff, being seated with her back to the luggage, was by a sudden jolt thrown from the coach, and her leg was thereby broken: the learned judge directed the jury to find for the plaintiff, if they were of opinion that the injury sustained was occasioned by the negligence of the defendant. The jury found for the plaintiff, and stated that they so found on account of the improper construction of the coach, and of the luggage being on the seat; and it was held, that the case was properly submitted to the jury, and that the facts found specially by them amounted to negligence in the defendant (*r*). So, it has been decided, that if

(*n*) *Bremner v. Williams*, 1 Car. & P. 414, per Best, J.

(*o*) *Sharp v. Grey*, 9 Bing. 457.

(*p*) *Burns v. Cork and Bandon R. Co.*, 13 Ir. C. L. Rep. 543.

(*q*) *Grote v. Chester and Holyhead R. Co.*, 2 Exch. 251.

(*r*) *Curtis v. Drinkwater*, 2 B. & Adol. 169. Where an excursion train was hired of a railway company by a society for an excursion, and the tickets were sold by the secretary, and the plaintiff, who had pur-

chased one of the tickets, was injured through the negligence of the company, it was held that this was evidence to go to the jury to support the statement in the declaration that the plaintiff became a passenger for hire with the company. *Skinner v. Brighton and S. C. R. Co.*, 5 Exch. 787; 15 Jur. 299. In this case both trains belonged to the same company, and a collision was therefore held to be some evidence of negligence.

through the default of a coach proprietor, in neglecting to provide proper means of conveyance, a passenger be placed in so perilous a situation as to render it prudent for him to leap from the coach, whereby his leg is broken, the proprietor will be responsible in damages, although the coach was not actually overturned (s). Passengers are entitled to a reasonable time to alight, and if they are injured in consequence of not being allowed a reasonable time, the company will be liable (t). The liabilities of the company attach although the passenger who is injured is travelling by means of a ticket which he possessed as one of a staff of reporters for a newspaper who were allowed to travel free (u). And although in one case it was ruled otherwise by Lord Denman (x), it seems now to be

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Plaintiff must give evidence of negligence.

(s) *Jones v. Boyce*, 1 Stark. R. 493.

(t) *Stockdale v. Lancashire and Yorkshire R. Co.*, 8 L. T. (N. S.) 287.

(u) *Great Northern R. Co. v. Harrison*, 10 Exch. 376.

(x) *Carpue v. London and Brighton R. Co.*, 5 Q. B. 747; 3 Railw. C. 692. A railway company, although a corporation, may be sued in trespass for the tortious acts of their servants; and it is not necessary that the servant should be appointed under the seal of the corporation. If therefore a servant of a company commit an assault *by their authority*, an action of trespass may be maintained against them, as if he should, when acting on behalf of the company, imprison a passenger to compel him to pay his fare, *Eastern Counties R. Co. v. Broom*, 20 L. J. (Exch.) 196; 6 Exch. 314; 6 Railw. C. 743; or remove a drunken passenger with undue violence, *Seymour v. Greenwood*, 30 L. J. (Exch.) 189, 327; or take a passenger into custody for mutilating a ticket, *Wilson v. Lancashire and Yorkshire R. Co.*, *Farren v. Same*, 27 L. T. 204; 30 L. J. (Exch.) 192; or for travelling without a ticket, *Goff v. Great Northern R. Co.*, 30 L. J. (Q. B.) 148. But the company will not be liable for any such tortious act committed by one of their servants, unless it be shown that the servant had authority to do the act complained of, or unless the company subsequently ratified the act of the servant. Thus where the superintendent of a station unlawfully ordered a passenger to be taken into custody for not paying a fare, and the passenger sued the company in trespass for false imprisonment, the plaintiff was nonsuited because he did not show affirmatively that the superintendent was authorized to arrest, either by general or particular instructions, or that there was a ratification of the act by the company. *Roe v. Birkenhead R. Co.*, 21 L. J. (Exch.) 9; 6 Railw. C. 795; 7 Exch. 36. But see *Goff v. G. N. R. Co.*, *supra*. So a railway company, like any other partnership, are liable on all contracts made by their servants, within the scope of the servant's authority. The extent of a servant's authority is not easily to

be defined. But the general rule is, that the employment of an agent gives also the powers *usually* exercised by similar agents, and thus a guide is furnished for ascertaining to what extent the employer is liable. The law on this point was discussed in a case, where the superintendent of a station on a railway directed that "every attention" should be paid to a passenger whose leg was broken in consequence of the moving of a truck on the railway, and a surgeon having performed the operation of amputation, he brought an action against the company to recover the amount of his charge. It was decided that he was not entitled to maintain the action, on the ground that it is not incident to the employment of a station master or other servant, that they should bind the company by contracts for surgical attendance on injured passengers. *Cox v. Midland Counties R. Co.*, 3 Exch. 268. If, however, it can be shown in such a case, that the company had given a *special* authority to the station master to provide such assistance, then the company are liable for his contracts. *Ibid.* 3 Exch. 278. When a company are responsible for acts done by the superintendents and servants of a railway, see *Taff Vale R. Co. v. Giles*, 23 L. J. (Q. B.) 43; 2 E. & B. 822; *Slim v. Great Northern R. Co.*, 23 L. J. (C. P.) 166; 14 C. B. 647. See also *Penhallow v. Mersey Docks*, 30 L. J. (Exch.) 329; *Stiles v. Cardiff Steam Navigation Co.*, 33 L. J. (Q. B.) 310; *Wilson v. West Hartlepool, &c. R. Co.*, 11 L. T. (N. S.) 327. See generally on this subject, Manley Smith's Law of Master and Servant, ch. v. A master is not in general liable to one servant, for damage resulting from the negligence of another of his servants. *Priestley v. Fowler*, 3 M. & W. 1. All the cases on this subject are collected in Smith's Law of Master and Servant, 2nd ed. 135. Where therefore a collision happened on the railway through the negligence of the servants of the company, and another servant, who was guilty of no negligence, was killed, it was decided that his representatives could not maintain an action against the company

clearly established, that, in order to render the company liable for negligence, it is necessary to give affirmative proof of negligence on their part (*y*), and it is not sufficient merely to prove the occurrence of an accident and rely upon that as *prima facie* evidence of negligence. In some cases, *res ipsa loquitur*, the accident may be of such a nature as that negligence may be presumed from the mere occurrence of it (*z*). But when the balance is even, the *onus* is on the party who relies upon the negligence of the other to turn the scale (*a*). Where,

under Lord Campbell's act. The principle is, that a servant, when he engages to serve a master, undertakes, as between himself and his master, to run all the ordinary risks of the service, and this includes the risks of negligence upon the part of a fellow-servant, when he is acting in the discharge of his duty as servant of him who is the common master of both; yet this must be taken with the qualification that the master shall have taken reasonable care to protect him from risk, by associating him only with persons of ordinary skill and care. *Hutchinson v. York, Newcastle and Berwick R. Co.*, 19 L. J. (Exch.) 296; 5 Exch. 243; *Wigmore v. Jay*, 5 Exch. 354; 19 L. J. (Exch.) 301; *Vose v. Lancashire and Yorkshire R. Co.*, 2 H. & N. 728; 27 L. J. (Exch.) 249. See also the American case of *Farwell v. Boston and Worcester Railroad Corporation*, 4 Metc. Rep. 49; 3 M'Q. 316, which has been frequently acted on in America; *Brown v. Maxwell*, 6 Hill's Rep. 592; *Coon v. Syracuse and Utica Railroad Co.*, 6 Barbour's Rep. 231; *Hayes v. Western Railroad Corporation*, 3 Cush. Rep. 270; *Albro v. Agawam Canal Co.*, 6 Cush. 75; *King v. Boston and Worcester Railroad Corporation*, 9 Cush. 112; *Gillshannon v. Stonybrook Railroad Corporation*, 10 Cush. 228; *Wright v. New York Central R. Co.*, 11 Smith's Rep. Appeals, New York, 562, et cas. ib. cit. See also the Scotch cases of *M'Naughton v. Caledonian R. Co.*, 19 Sec. Ser. 271; 3 M'Q. 311; 28 L. T. 376; 21 Sec. Ser. 160; *M'Millan v. M'Millan*, 23 Sec. Ser. 1082; *Somerville v. Gray*, 1 Third Ser. 768; *Morton v. Edinburgh and Glasgow R. Co.*, 2 Third Ser. 589. (Quære, whether directors can be said to be fellow-servants of an engine-driver.) And the Irish case of *M'Eniry v. Waterford and Kilkenny R. Co.*, 8 Ir. C. L. R. 312. It has been held, that the guard of a train and the "ganger" of platelayers engaged on the permanent way (*Waller v. South-Eastern R. Co.*, 2 H. & C. 102; 32 L. J. (Exch.) 205; 9 Jur. (N. S.) 501); a labourer employed in loading trucks with ballast, and a deputy foreman of platelayers (*Lovegrove v. London, Brighton and S. C. R. Co.*, 33 L. J. (C. P.) 329); a carpenter engaged in painting an engine-shed near a turntable, and the railway servants engaged in managing traffic (*Morgan v. Vale of Neath R. Co.*, 33 L. J. (Q. B.) 260); chief-engineer and engineer (*Searle v. Lindsay*, 31 L. J. (C. P.)

106), are fellow-servants within the rule which prevents fellow-servants recovering against their common master damages sustained through the negligence of each other. The same principle has been extended to a volunteer. *Degg v. Midland R. Co.*, 1 H. & N. 773; 26 L. J. (Exch.) 171; *Abraham v. Reynolds*, 5 H. & N. 143; *Potter v. Faulkner*, 31 L. J. (Q. B.) 30. But the servant must be acting in the service of the common master at the time of the injury being sustained. If not, he may maintain an action as if he were a stranger. *Ibid.* In like manner, where a guard, whose duty it was to attach carriages to an engine, was injured by an accident occasioned by his not having another person to assist him, it was decided that no action would lie against the company who employed him, because he voluntarily undertook the risk attached to his situation. *Skip v. Eastern Counties R. Co.*, 9 Exch. 223; 23 L. J. (Exch.) 23. As to the liability of the company for damages arising through the carelessness of contractors employed on the railway, see *Reedie v. L. and N. W. R. Co.*, 4 Exch. 244; ante, 416; *Glover v. Same*, 5 Exch. 66; *Steel v. South-Eastern R. Co.*, 16 C. B. 550; *Hole v. Sittingbourne and Sheerness R. Co.*, 30 L. J. (Exch.) 81; *Butler v. Hunter*, 31 L. J. (Exch.) 214.

(*y*) If the accident was caused by the wilful and wrongful act of a stranger, the company would not be liable. *Latch v. Rumner R. Co.*, 27 L. J. (Exch.) 155. But a company over whose line defendants run by arrangement, are not such strangers. *Blake v. Great Western R. Co.*, 31 L. J. (Exch.) 346; 7 H. & N. 987.

(*z*) See *Bird v. Great Northern R. Co.*, 28 L. J. (Exch.) 3; *Byrne v. Beadle*, 33 L. J. (Exch.) 13; *Scott v. London Dock Co.*, 13 Weekly Rep. 99.

(*a*) *Tooney v. London, Brighton and S. C. R. Co.*, 27 L. J. (C. P.) 39; 3 C. B. (N. S.) 146; *Bird v. Great Northern R. Co.*, ubi supra; *Cornman v. Eastern Counties R. Co.*, 29 L. J. (Exch.) 94; 4 H. & N. 781; *Cotton v. Wood*, 29 L. J. (C. P.) 333; *Hammack v. White*, 31 L. J. (C. P.) 129; 11 C. B. (N. S.) 588; *Tattan v. Great Western R. Co.*, 29 L. J. (Q. B.) 184. And see *Martin v. Great Northern R. Co.*, 16 C. B. 179; *Great Western R. Co. of Canada v. Fawcett*; *Same Co. v. Braid*, 1 Moore, P. C., N. S. 101; 9 Jur. (N. S.) 339; and cas. cit. post.

therefore, plaintiff went to defendants' station at night, for the purpose of going by train, and asked a stranger to tell him the way to the urinary, and he pointed out a part of the platform on which there were two doors, one marked "For Gentlemen," with a light over it, and the other "Lamp-room," with no light over it, and plaintiff, who was in a hurry and could not read, entered the latter door and fell down some steps and hurt his head, it was held that there was no evidence to go to the jury of negligence by the company, and plaintiff was nonsuited (*b*).

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Tooney v. London, Brighton and South Coast R. Co.

And so, where plaintiff, being sent to the station to receive a parcel by daylight, was with a crowd of people waiting for a train, and in proceeding with them caught his foot against the edge of a weighing-machine, the base of which was raised a few inches above the level of the platform, and falling broke his knee-cap; the machine was of the usual description, in its usual place adjoining the end of a counter on which passengers' luggage was placed on arrival of trains, and was used for weighing luggage; it was also held, that there was no evidence of negligence by the company to go to the jury (*c*).

Cornman v. Eastern Counties R. Co.

Actions against railway companies for injuries to passengers by negligence, being in reality founded upon a breach of their duty as carriers to carry passengers safely, are not the less actions of tort because there happens to be also a contract with the passenger (*d*).

Actions for injuries are actions of tort.

But the company would not be liable for injuries caused by their servants' negligence to a passenger, who might by the exercise of ordinary care have avoided the consequences of the negligence of the company or their servants (*e*). It is not however sufficient, in order to exempt the company from responsibility, to show that the party injured did by his own act *contribute* to the injury, but it must be shown that he did not use ordinary care to avoid the consequences of the negligence of the company (*f*). Whether or not he did use ordinary care would be a question for a jury. But if he did not he would have no right to recover compensation from the company for what, properly speaking, was the effect of *his own* want of caution.

Company not liable to passenger who omits to use ordinary care.

Therefore, in an action by a passenger in the train of one railway company (*g*) against another company, with a train belonging to

Bridge v. Grand Junction R. Co.

(*b*) *Tooney v. L., B. and S. C. R. Co.*, ubi supra.

(*c*) *Cornman v. Eastern Counties R. Co.*, ubi supra.

(*d*) *Bretherton v. Wood*, 3 Brod. & B. 54; *Tatton v. Great Western R. Co.*, 29 L. J. (Q. B.) 184; *Martin v. Great Northern R. Co.*, 16 C. B. 179; *Keys v. Belfast, &c. R. Co.*, 8 Ir. C. L. R. 167; 9 H. L. C. 556; 8 Jur. (N. S.) 367.

(*e*) So a master cannot recover from a third person for damage, which has arisen through his own servant's negligence. *Pard-*

ington v. South Wales R. Co., 26 L. J. (Exch.) 105; *Ellis v. South Western R. Co.*, 26 L. J. (Exch.) 349; 2 H. & N. 424.

(*f*) *Butterfield v. Forrester*, 11 East, 60. And see *Clayards v. Dethick*, 12 Q. B. 439.

(*g*) *Bridge v. Grand Junction R. Co.*, 3 M. & W. 244, and in America, *Cntr v. Finney*, 17 Barbour's Rep. 95. And see *Davies v. Mann*, 10 M. & W. 546; *Tuff v. Warman*, 27 L. J. (C. P.) 322; 5 C. B. (N. S.) 573; *Scott v. Dublin and Wicklow R. Co.*, 11 Ir. C. L. R. 377.

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which a collision had taken place, whereby plaintiff was injured, a plea by defendants that the injury was caused *in part* by the negligence of the persons who had the care of the train in which plaintiff was riding, was held bad, as it was consistent with all the facts stated in it that plaintiff, or those who had charge of the train in which he was riding, could not by the exercise of ordinary care have avoided the consequences of defendants' negligence. And Lord Wensleydale said,—

"The rule of law is laid down with perfect correctness in the case of *Butterfield v. Forrester* (*h*); and that rule is, that although there may have been negligence on the part of the plaintiff, yet, unless he might by the exercise of ordinary care have avoided the consequences of the defendants' negligence, he is entitled to recover: if by ordinary care he might have avoided them, he is the author of his own wrong."

Child identified with person in charge of it.

Waite v. North-Eastern R. Co.

And where plaintiff, a child of five years old, was under the care of his grandmother, who purchased tickets for both from A. to B. on defendants' railway, and while crossing the line at A. to be ready for their train, they were both knocked down and injured by another train; the accident was partly owing to defendants' negligence, but there was also such negligence on the part of the grandmother as would have prevented her from recovering against defendants; it was held by the Court of Queen's Bench, and affirmed by the Exchequer Chamber, that there was such a complete identification of plaintiff with his grandmother, that by reason of her negligence he could not maintain an action against defendants (*i*).

Through ticket.

We have already seen (*k*) that a company issuing a "through ticket" to a place beyond their own line are liable for injuries sustained by the passenger at any part of the journey.

Death of plaintiff after action brought, and before judgment.

If a person injured through the negligence of a railway company brings an action against the company and dies before the action is terminated, the maxim of law, *actio personalis moritur cum personâ*, applies, and the action cannot be proceeded with by his representatives, either under the provisions of the Common Law Procedure Act or under Lord Campbell's Act (*l*). If the case is one in which an action would lie under Lord Campbell's Act a fresh action must be brought.

Lord Campbell's Act.

The responsibilities of railway companies as carriers of passengers were greatly extended by Lord Campbell's Act, 9 & 10 Vict. c. 93 (*m*).

(*h*) *Ubi supra*.

(*i*) *Waite v. North-Eastern R. Co.*, 27 L. J. (Q. B.) 417; 28 L. J. (Q. B.) 258; E., B. & E. 719. But see *Singleton v. Eastern Counties R. Co.*, 7 C. B. (N. S.) 287. See also *Abbott v. M'Fie*, 33 L. J. (Exch.) 177.

(*k*) *Ante*, 521.

(*l*) *Flinn v. Perkins*, 32 L. J. (Q. B.) 10.

(*m*) See this statute, post, App. 107. See

also 27 & 28 Vict. c. 95, post, App., amending it. If the party who is killed omitted to use ordinary care to avoid the consequences of the company's negligence, no action will lie at the suit of his relatives, to recover damages under this statute. Per Lord Denman, C. J. *Tucker v. Chaplin*, 2 Car. & K. 730, vide *supra*, 533.

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Sect. 1 enacts, that whensoever the death of a person shall be caused by wrongful act, neglect or default, such as would (if death had not ensued) have entitled the party injured to recover damages in respect thereof(*n*), in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony(*o*). By sect. 2 every such action shall be for the benefit of the wife, husband(*p*), parent(*q*) and child(*r*) of the person whose death shall have been so caused, and shall be brought in the name of the executor or administrator(*s*) of the person deceased; and the jury may give such damages as they may think proportioned to the injury resulting from such death to the *parties respectively* for whom and for whose benefit such action shall be brought(*t*); and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties,

Sect. 2.

(*n*) This has reference not to the nature of the loss or injury sustained, but to the circumstances under which the bodily injury arose, and the nature of the wrongful act, neglect or default complained of. *Pym v. Great Northern R. Co.*, post, 537. Funeral expenses and mourning ought not to be allowed. The subject matter of the statute is compensation for injury by reason of a relative not being alive, and there is no language in the statute referring to the cost of the ceremonial of respect paid to the deceased in his funeral, or in putting on mourning for his loss. *Dalton v. South-Eastern R. Co.*, 27 L. J. (C. P.) 227.

(*o*) It may be useful to notice, that by the "Railway Passengers Assurance Company's Act, 1864," 27 & 28 Vict. c. cxxv, s. 35, it is enacted, that no contract of that company, nor any compensation received or recoverable by virtue of any such contract, either under that act or otherwise, shall prejudice or affect any right or action, claim or demand, which any person or his executors or administrators may have against any other company or any person, either at common law or by virtue of 9 & 10 Vict. c. 93, or of any other act of Parliament, for the injury, whether fatal or otherwise, in respect of which the compensation is received or recoverable. It may be also useful to notice, that in many of the Railway Acts passed in 1864 (ante, 474), which contain clauses compelling the companies to run cheap trains for the labouring classes, there is also a clause limiting the liability of the company under any claim to compensation for injury or otherwise in respect of each such passenger to a sum not exceeding 100*l.*, and the amount payable in respect of any passenger so injured shall be determined by an arbitrator

to be appointed by the Board of Trade, and not otherwise. See "The London, Chatham and Dover Railway (New Lines) Act, 1864," 27 & 28 Vict. c. cxcv, s. 137; "The Metropolitan Railway (Notting Hill and Brompton Extension) Act, 1864," 27 & 28 Vict. c. ccxci, s. 46; "The Great Eastern Railway (Metropolitan Station and Railways) Act, 1864," 27 & 28 Vict. c. cccxiii, s. 83; "The Metropolitan Railway (Tower Hill Extension) Act, 1864," 27 & 28 Vict. c. cccxv, s. 25; "The North Western and Charing Cross Railway Act, 1864," 27 & 28 Vict. c. cccxxiii, s. 95.

(*p*) *Chapman v. Rothwell*, E., B. & E. 168; 27 L. J. (Q. B.) 315. The declaration need not negative the existence of any relations entitled to compensation other than those named. *Barnes v. Ward*, 9 C. B. 392. Where both husband and wife were killed by the same railway accident, administration was granted to their respective next of kin. *Re Wheeler*, 31 L. J. (Prob. Mat. & Adm.) 40.

(*q*) See *Wiems v. Mathieson*, 4 M'Q. 215, where mother recovered for loss of son who supported her.

(*r*) I. e., legitimate child. *Dickinson v. North-Eastern Railway Company*, 32 L. J. (Exch.) 91.

(*s*) If there is no executor or administrator, or if no action is brought by him within six months of the death, the action may be brought in the name of all or any of the persons beneficially interested. 27 & 28 Vict. c. 95, s. 1, post, App.

(*t*) Therefore the jury must look to the interests of *each* of these parties, and not take them as a *class*. *Pym v. Great Northern R. Co.*, 32 L. J. (Q. B.) 377; 2 Best & S. 759.

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in such shares as *the jury by their verdict shall find and direct* (u). Only one action may be brought, and it must be commenced within twelve calendar months after the death of the deceased person (x); and the plaintiff must, with the declaration, deliver a full particular of the person on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered (y).

When action may be brought.

"We conceive," said Lord Campbell, in *Senior v. Ward* (z), "that the legislature in passing this statute intends to give an action to the representative of a person killed by negligence, only when, had he survived, he himself, at the common law, could have maintained an action against the person guilty of the alleged negligence." And therefore, in that case, although the negligence of the defendant might have been an answer to the defence, that the accident was chiefly caused by the negligence of a fellow servant, the negligence of the plaintiff himself, which materially contributed to the accident, would upon well established principles have deprived him of any remedy, *volenti non fit injuria*.

Damages.

It has been decided that the jury, in assessing damages under this statute, are confined to injuries of which a *pecuniary estimate* can be made, and cannot take into consideration mental suffering occasioned to survivors by the death of their relative. The Court of Queen's Bench say on this point (a):—

Blake v. Midland R. Co.

"The important question is, whether the jury, in giving damages, apportioned to the injury resulting from the death of the deceased, to the parties for whose benefit this action is brought, are confined to injuries of which a pecuniary estimate may be made, or may add a *solatium* to those parties, in respect of the mental suffering occasioned by such death. The title of this act may be some guide to its meaning, and it is 'An Act for compensating Families of Persons killed by Accident,' not for solacing their wounded feelings. Reliance was placed upon the first section, which states in what cases the newly given action may be maintained, although death has ensued; the argument being that the party injured, if he had recovered, would have been entitled to a *solatium*; and, therefore, so shall his representative on his death. But it will be evident that this act does not transfer this right of action to his representative; but gives to his representative a totally

(u) Therefore, actions brought under this act cannot safely be *settled* out of court. But money may be paid into court in one sum. 27 & 28 Vict. c. 95, s. 2, post, App.

(x) 9 & 10 Vict. c. 93, s. 3, post, App. 107. Where the death of a married woman was caused by negligence, and the husband, a mariner, was abroad at the time and was not expected home for twelve months, Sir C. Cresswell granted to the mother of the deceased letters of administration, limited for the purpose of bringing an action under this statute. *Re Williams*, 31 L. J. (Prob. Mat. & Adm.) 40, note.

(y) 9 & 10 Vict. c. 93, s. 4, post, App. 107.

(z) 28 L. J. (Q. B.) 139; 1 Ell. & Ell. 385. And see per Martin, B., in *Manley v. St. Helens Canal and R. Co.*, 27 L. J. (Exch.) 164; 2 H. & N. 840. (Which case shows that a railway company cannot escape liability, upon the ground that they are discharging a public trust.) In *Pym v. Great Northern R. Co.*, 32 L. J. (Q. B.) 378, Erle, C. J., says, "The statute gives a cause of action beyond what the deceased could have maintained, if he had only been injured and not killed."

(a) *Blake v. Midland R. Co.*, 21 L. J. (Q. B.) 233; 18 Q. B. 93.

new right of action on different principles. The measure of damage is not the loss or suffering of the deceased, but the injury resulting from his death to his family. This language seems more appropriate to a loss of which some estimate may be made, than to an indefinite sum, independent of all pecuniary estimate, to sooth the feelings, and the division of the amount strongly leads to the same conclusion. It seems to us that if the legislature had intended to go the extreme length, of giving, not only compensation for pecuniary loss, but a *solatium* to all the relations enumerated in sect. 5, language more clear and appropriate for this purpose would have been employed. For these reasons we are of opinion, that the learned judge, at the trial, ought more explicitly to have told the jury, that, in assessing the damages, they could not take into their consideration the mental sufferings of the plaintiff for the loss of her husband, and that as the damages certainly exceeded any loss sustained by her, admitting of a pecuniary estimate, they must be considered excessive."

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But legal liability alone is not the test of injury, in respect of which damages may be recovered under Lord Campbell's Act, a reasonable expectation of pecuniary advantage by the relatives remaining alive may be taken into account by the jury, and damages may be given in respect of that expectation if it be disappointed, and the probable pecuniary loss thereby occasioned (b).

Legal liability not only test.

The mere proof, however, of death by negligence will not entitle the executor or administrator to a verdict for nominal damages; there must be some proof of actual damage. Where the deceased, a boy of fourteen, the son of a mason, earned four shillings a week, which was applied by his parents to the general support of the family, and no evidence was given as to whether the sum earned exceeded or was less than the actual cost of maintenance, and the jury gave 20*l.* damages (10*l.* to the father, and 10*l.* to the mother), the court refused to disturb the verdict (c).

Proof of actual damage requisite.

It has been held (d) that the loss of the benefit of a superior education, and the enjoyment of greater comforts and conveniences of life, is a pecuniary loss, for which the wife and children of the person killed may maintain an action, where the income of the deceased wholly ceases with his death, or where his premature death prevented the deceased from having made the extra provision for his family, which he might have been reasonably expected to have made had he lived.

Pym v. Great Northern R. Co.

"It is true," said Cockburn, C. J., "that it must always remain matter of uncertainty, whether the deceased person would have applied the necessary portion of income in securing to his family the social and domestic advantages of which they are said to have been deprived by his death, still more, whether he would have laid by any and what portion of his income to make provision for them at his death. But as it has been established by the cases decided upon the statute, that if

(b) *Franklin v. South-Eastern R. Co.*, 3 H. & N. 211; *Dalton v. Same*, 27 L. J. (C. P.) 227; 4 C. B. (N. S.) 296; *Pym v. Great Northern R. Co.*, *infra*.

(c) *Duckworth v. Johnson*, 29 L. J. (Exch.)

25; 4 H. & N. 653.

(d) *Pym v. Great Northern R. Co.*, 31 L. J. (Q. B.) 249; 2 Best & S. 759; 32 L. J. (Q. B.) 377; 4 B. & S. 396.

The Rights and Liabilities of the Company as Carriers of Passengers.

there be a reasonable expectation of pecuniary advantage, the extinction of such expectation by negligence occasioning the death of the party from whom it arose, will sustain the action, it is for a jury to say under all the circumstances, and taking into account all the uncertainties and contingencies of the particular case, whether there was such a reasonable and well-founded expectation of pecuniary benefit as can be estimated in money, and so become the subject of damages in such an action."

Passengers are booked conditionally.

Passengers not paying their fare.

But carriers of passengers are not compellable to carry a passenger unless there be room in the carriage (*e*); and, as we have seen, the bye-laws issued under the authority of the Board of Trade provide, that passengers at the road stations are only booked conditionally upon there being room (*f*). The bye-laws also contain certain regulations which provide for the payment of the fares and good behaviour of passengers conveyed on the railway (*g*); and, by the Railways Clauses Consolidation Act, it is enacted, that if any person travel, or attempt to travel, in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof; or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage—every such person, for every such offence, forfeits to the company a sum not exceeding forty shillings; and if any person be discovered, either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned, all officers and servants and other persons on behalf of the company, or such other company or party as aforesaid, and all constables, gaolers, and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law (*h*).

(*e*) *Lovett v. Hobbs*, 2 Show. 428.

(*f*) See ante, 444.

(*g*) It has been decided in the American courts, that, although steam-boat proprietors, holding themselves out as common carriers, are bound to receive passengers on board under ordinary circumstances, they may refuse to receive them, if there be a reasonable objection. Thus they are not bound to admit passengers on board who refuse to obey the reasonable regulations of the boat, or who are guilty of gross or vulgar habits of conduct, or who make disturbances on board; or whose characters are doubtful, or dissolute, or suspicious; and, *a fortiori*, whose characters are unequivocally bad. And, as passengers are

bound to obey the orders and regulations of the proprietors, unless they are oppressive and grossly unreasonable, whoever goes on board under ordinary circumstances impliedly contracts to obey such regulations, and may justly be refused a passage if he wilfully resists or violates them. Story on Bailments, 375, citing *Jencks v. Coleman*, 2 Sumner's Rep. 242.

(*h*) 8 & 9 Vict. c. 20, ss. 103, 104, post, App. 93. If a passenger be wrongfully imprisoned by orders of the superintendent for not having a ticket or nonpayment of fare, the company will be liable to an action for false imprisonment. *Goff v. Great Northern R. Co.*, 30 L. J. (Q. B.) 148, and see supra, 531, note (*x*).

In connection with the subject of this chapter, it may here be observed that if, *through negligence*, sparks fly from the engines used on a railway, whereby buildings or other adjoining property are destroyed by fire, the company are liable to be sued for damages thus occasioned. Therefore, in an action against a railway company for so negligently managing and conducting an engine, that premises of the plaintiff adjoining the line were destroyed by fire emitted from the engine, it was decided that the fact of premises being fired by sparks emitted from a passing engine, was *prima facie* evidence of negligence on the part of the company, rendering it incumbent on them to show that some precaution had been adopted by them, reasonably calculated to prevent such accidents; and as there was no proof of any precaution adopted by the company to avoid such a mischance, the plaintiff recovered. It was also ruled that evidence was admissible for the purpose of showing that other engines belonging to the company upon other occasions, in passing along the line, threw sparks or ignited matter to a sufficient distance to reach the building in question, without showing the precise circumstances under which this occurred (*i*). In giving judgment, Tindal, C. J., said:—

Liability of Company for Damages caused by Sparks from Locomotive.

Piggott v. Eastern Counties R. Co.

“The defendants are a company intrusted by the legislature with an agent of an extremely dangerous and unruly character, for their own private and particular advantage; and the law requires of them that they shall, in the exercise of the rights and powers so conferred upon them, adopt such precautions as may reasonably prevent damage to the property of third persons through or near which their railway passes. The evidence in this case was abundantly sufficient to show that the injury of which the plaintiff complains was caused by the emission of sparks, or particles of ignited coke, coming from one of the defendants’ engines; and there was no proof of any precaution adopted by the company to avoid any such mischance. I therefore think that the jury came to a right conclusion in finding that the company were guilty of negligence, and that the injury complained of was the result of such negligence. There are many old authorities to sustain this view.”

Where, however, it was proved that a railway company who used locomotives endeavoured to protect the parties over whose lands they passed from injury, by *resorting to all known means of precaution*, it was held by the Exchequer Chamber that the company were not liable, as it was clear there was no negligence in fact (*k*). But in a subsequent case (*l*), it was held in an action against a railway com-

Vaughan v. Taff Vale R. Co.

(*i*) *Piggott v. Eastern Counties R. Co.*, 3 C. B. 229; 10 Jur. 571; and see *Aldridge v. Great Western R. Co.*, 3 M. & G. 515.

(*k*) *Vaughan v. Taff Vale R. Co.*, 29 L. J. (Exch.) 247; 5 H. & N. 679; reversing S. C., in Exch. 28 L. J. (Exch.) 41; 3 H. & N. 743.

(*l*) *Freemantle v. L. and N. W. R. Co.*, 31 L. J. (C. P.) 12; 10 C. B. (N. S.) 89.

In *Stokes v. Eastern Counties R. Co.*, 2 Fost. & Fin. 691; Cockburn, C. J., directed the jury that the question is not, whether, according to evidence of a scientific and speculative nature, a flaw or defect in engines or machinery might not possibly have been detected, but whether practically and by the use of ordinary and reasonable care it ought to have been observed. And in *Ford*

Liability of Company for Damages caused by Sparks from Locomotive.

Freemantle v. London and North-Western R. Co.

pany for negligence, by the emission of sparks from a locomotive, whereby the plaintiff's wheat-rick was burnt, that a learned judge at nisi prius was right, who, after telling the jury that the evidence for the company was extremely powerful to show that the engine was of the best known construction, but that the evidence of the plaintiff's witnesses was, that, in their opinion, the risk of causing mischief by sparks from the engine was not improbable, and that the engine was so constructed as to be dangerous without a precaution of some kind, left it to the jury to decide whether they believed either the plaintiff's or the defendants' witnesses on this point; and also left it to the jury to consider whether each set of witnesses might not have been mistaken in the degree of excellence or of defect imputed to the engine; and if so, said that it was still for the jury to decide either for the company, if no further precautions could with reason be required; or for the plaintiff, if they were in reason requisite.

Result of cases.

The result of the above cases is, that the company will be liable for damages caused by fire arising from sparks from their locomotives, unless they adopt all reasonable precautions to prevent such accidents. Whether or not they have done so is a question for the jury, to be decided upon the evidence. But beyond that there is this further question for the jury, which does not appear to have hitherto been submitted to any jury in England (*m*), viz., whether or not the farmer whose rick is burnt was not more negligent, incautious and imprudent in setting his rick where it was placed, than the company were in using such a locomotive as gave rise to the calamity complained of. This is a question of fact for the jury, not a question of law (*n*).

Blowing off steam at level crossing.

And where a railway crossed a highway on the level, it was held to be clearly actionable negligence in the driver to blow off steam just at the level crossing (*o*).

v. London and South-Western R. Co., 2 Fost. & F. 730, Erle, C. J., directed a jury that a railway company is bound to use the best precautions in known practical use to secure the safety of passengers, but not every possible precaution which the highest scientific skill (according to speculative evidence) might have suggested. And if there are several grounds of negligence suggested, the jury must be satisfied that some one or other of them existed and caused damage to the party injured, though they need not be able to ascribe the whole

injury to either.

(*m*) It has in America, *Ross v. Boston and Worcester Railroad Corporation*, 6 Allen's Rep. 87 (Supreme Court, Massachusetts).

(*n*) See per Tindal, C. J., in *Aldridge v. Great Western R. Co.*, 3 M. & G. 519; and see *Marriott v. Stanley*, 1 M. & G. 568, and *Bridge v. Grand Junction R. Co.*, and other cases cited, ante, 533.

(*o*) *Manchester South Junction, &c. R. Co. v. Fullarton*, 14 C. B. (N. S.) 54.

PART III.

CHAPTER I.

ON MANDAMUS.

WRITS of mandamus are now so frequently applied for in matters arising out of railway transactions, that a short account of the writ, and of the mode of obtaining it, seems to fall within the legitimate purposes of this work (*a*). Writs of mandamus.

Writs of mandamus are of two kinds: 1. The Ancient Prerogative Writ, issued in the Queen's name, out of the Court of Queen's Bench, and directed to any person, corporation, or inferior court of judicature within the Queen's dominions, requiring them to do some particular thing therein specified, which appertains to their office and duty. 2. The Statutory Writ, founded on the Common Law Procedure Act, 1854, 17 & 18 Vict. c. 125, which may be obtained by commencing an action in either of the superior courts of common law.

It will be convenient in the first instance to consider the state of the law and practice in relation to the Prerogative Writ, and thus light will be thrown on the course of proceeding applicable to the Statutory Writ. Prerogative writ.

The usual grounds upon which the prerogative writ of mandamus is granted are that the applicant has a right, a legal right, and no other specific *legal* remedy; for a remedy in equity is not considered as any ground of refusal, if the right be legal (*b*). It is no objection to granting a mandamus to do a particular act that an indictment will also lie for the omission to do the act; for the indictment does not compel the doing of the act, and therefore is not equally effectual with the mandamus (*c*); an indictment is merely a proceeding *in pœnam* for the past, and not a remedy for the future. So it has been held that the writ will lie to compel the building of a bridge by a company, although the owner of the adjoining lands was authorized by the act to build it at their expense (*d*).

(*a*) And see *Tapping on Mandamus*.

(*b*) *R. v. Balby, &c. Road Trustees*, 1 Bail C. C. 134. This is not a rule of law, but a rule regulating the discretion of the court in granting writs of mandamus. *Re Barlow*, 30 L. J. (Q. B.) 271.

(*c*) 5 Bac. Ab., tit. "Mandamus," 256, 7th ed.

(*d*) *R. v. Norwich and Brandon R. Co.*, 15 L. J. (Q. B.) 24; 4 Railw. C. 112; 3 D. & L. 385.

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This writ is also the proper remedy to enforce obedience to acts of Parliament and to the king's charters, and, in such cases, is demandable *ex debito justitiæ* (e).

The Prerogative Writ is granted on suggestions in affidavits, which state all the facts necessary to show the applicant's right to the writ; whereupon, in order more fully to satisfy the court that there is a probable ground for such interposition (f), a rule is made (g), directing the party complained of to show cause why a writ of mandamus should not issue; and if no sufficient cause be shown, the writ itself is issued at first in the alternative, either to do the act, or signify some reason to the contrary; to which a return or answer must be made at a certain day (h).

(e) 5 Bac. Abr., tit. "Mandamus," 257, 7th ed.

(f) Where by agreement between the parties, an application was made for a mandamus, merely with a view to obtain the opinion of the court, whether on the construction of a private act, the proceeding by mandamus was the proper one, the court stopped the argument, and refused to give any decision. *R. v. Blackwall R. Co.*, 9 Dowl. P. C. 558.

(g) But now the rule may be absolute in the first instance. 17 & 18 Vict. c. 125, s. 76, post, 558. See also *Ex parte Foundling Hospital*, 5 Dowl. P. C. 722.

(h) *Preliminary Proceedings to obtain the Writ.*—When it is determined to apply for a writ of mandamus, (and the rule applies to the Statutory Writ, see 17 & 18 Vict. c. 125, s. 69, post, 557,) the first step to be taken is to require the party, against whom the application is intended to be made, to do the act sought to be enforced, and such request ought to be made to the persons whose duty it is to do the act, and not to a clerk or other officer; *R. v. Wilts and Berks Canal Co.*, 3 A. & E. 477; and in some cases it may be very desirable to give a written and explicit notice of the nature of the request, and that, in case of a refusal to comply with it, the applicant intends to apply for a writ of mandamus. The rule is, that a mandamus ought not to be moved for unless the party alleged to be in fault has known distinctly what he is required to do, so as to exercise an option whether he will do it or not. Per Coleridge, J., in *R. v. Brecknock and Abergavenny Canal Co.*, 3 A. & E. 224. The demand may be made by a shareholder in the company itself. *R. v. Ambergate, &c. R. Co.*, 17 Q. B. 362. If an evasive answer, or a qualified refusal to do the act, be given, *R. v. Trustees of North Leach and Witney Roads*, 5 B. & Ad. 978, then some further application should be made, as it is always desirable that a direct refusal, or something equivalent, should be shown. It is not necessary that the word "refuse," or any equivalent to it, should be used, but there should be enough

to show that the party withholds compliance, and distinctly determines not to do what is required. *R. v. Wilts and Berks Canal Co.*, 8 Dowl. P. C. 623; *R. v. Brecknock and Abergavenny Canal Co.*, 3 A. & E. 223; *R. v. Norwich and Brandon R. Co.*, 15 L. J. (Q. B.) 24; 4 Railw. C. 112; 3 D. & L. 385. It has been observed upon this subject, "There may be refusal by continued silence as well as by words;" per Littledale, J., in *R. v. Select Vestrymen of St. Margaret's, Leicester*, 8 A. & E. 904; *R. v. Norwich and Brandon R. Co.*, 3 D. & L. 365. See also *Ibid.* 889; but see *R. v. Bristol and Exeter R. Co.*, 4 Q. B. 162; and it has also been suggested, that, when a direct answer is withheld, the proper course of proceeding is to give the parties notice that a direct answer is required, and that the not giving it will be considered a refusal. Per Lord Denman, C. J., in *R. v. Brecknock and Abergavenny Canal Co.*, *ubi supra*. The omission to take any step was held to be a sufficient tacit refusal in *R. v. Ambergate, &c. R. Co.*, *ubi supra*. The objection, that no sufficient demand and refusal appears on the affidavits, must be taken when cause is shown, before the merits are discussed. *R. v. Eastern Counties R. Co.*, 10 A. & E. 545; and see 4 Q. B. 171. If any condition precedent is required by the statute as a necessary preliminary to the application, a compliance must be shown. But where, by the provisions of the statute, a bond might be required by the railway company before they issue their warrant, a mandamus may be applied for, although no bond has been tendered by the party seeking compensation. *R. v. North Union R. Co.*, 1 Railw. C. 729. If an umpire fail to make an award, the company may be compelled by mandamus to issue a warrant to the sheriff to assess the compensation, and no formal demand is necessary in such a case. *Re Yorkshire and Goole R. Co.*, 18 Law J. (Q. B.) 33; 7 D. & L. 36.

The Affidavits.—Great care is requisite in preparing the affidavits upon which the application for the prerogative writ is founded, for the court will not permit a

If the person to whom the writ is directed makes no return, he is punishable by attachment. If, on the other hand, he makes a return,

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second application to be made, if the first application should be refused in consequence of a defect in the affidavits. *R. v. Manchester and Leeds R. Co.*, 8 A. & E. 413; *Ex parte Thompson*, 6 Q. B. 721; *Masters v. Butler*, 18 Law J. (Q. B.) 328; 13 Jur. 869; *Tilt v. Dickson*, 4 C. B. 736; *Skinner v. Carter*, 16 C. B. 548; and see ante, 314. One exception seems to be where the alteration is simply in the form of the title or jurat, so that the re-swearing the affidavit would clearly leave parties in the same situation. *R. v. Great Western R. Co.*, 5 Q. B. 601. And the court have even allowed a second writ to be issued after the first had been quashed for a variance. *R. v. East Lancashire R. Co.*, 9 Q. B. 980. The affidavit or affidavits should fully and explicitly state the facts which are essential to entitle the applicant to relief. Affirmative as well as negative matters should be stated positively; and parties should swear directly to their information and belief. It has been said to be insufficient for a party to allege, in his affidavit, that he "objects" to certain specified defective proceedings; nor is it sufficient to assert generally that a statute does not authorize a proceeding which has taken place; it should be stated how it fails to do so. *R. v. Manchester and Leeds R. Co.*, 8 A. & E. 416; and see ante, 315. If any written documents are important, copies should be annexed to the affidavits, and verified in the usual manner. If strong resistance is anticipated on the other side, and the matter in dispute be a question of fact or a matter of opinion, then it may be proper to corroborate and confirm the statement of such matters as are important, by the testimony of several deponents. In some cases, the affidavits may also be so framed as to anticipate and answer possible objections or arguments, which the other side may be expected to rely upon. It may be remarked here, that in cases where a corporation aggregate is a party, and the affidavit of the party is required by the practice of the court, the affidavit of the attorney to the corporation is admissible. *Kingsford v. Great Western R. Co.*, 33 L. J. (C. P.) 307.

The Application for the Writ.—The necessary affidavits having been made, the usual course is to move for the writ, and the rule may now in all cases be absolute in the first instance. If a rule nisi only be granted, it is drawn up at the Crown Office, and copies are served upon the parties mentioned in the rule. If the rule is opposed, affidavits may be made in answer; and when cause is shown against the rule, the affidavits made on both sides are referred to and commented upon by the counsel for the respective parties, and the court will thereupon discharge the rule or make it absolute, as is

mentioned in the text. If the matter, either of law or fact, be doubtful, the court will in general grant the writ, in order that it may be more solemnly discussed upon the return. *R. v. Bland*, Bull. N. P. 200. The court may mould the rule in what manner they please, in order to meet the justice of the case. *R. v. Leicester*, 4 B. & C. 891. But they will not mould the writ. *R. v. Tithe Commissioners*, 14 Q. B. 459. Therefore a writ bad in part is bad altogether. *R. v. Caledonian R. Co.*, 16 Q. B. 19.

Costs.—The rule may be made absolute, or discharged with or without costs. On the discharge of a rule for a mandamus, the court generally gives the party showing cause his costs. *R. v. Mayor of Bridgenorth*, 10 A. & E. 66; *R. v. Mayor of Newbury*, 1 Q. B. 751; *R. v. Eastern Counties R. Co.*, 2 Q. B. 578. If the rule be made absolute, the court will not always grant costs upon that motion, *R. v. Justices of Salop*, 6 Dowl. P. C. 34, except under particular circumstances. *R. v. Thames and Isis Commissioners*, 8 A. & E. 905, note (b). If the rule for mandamus is made absolute, the costs may be included in the rule if the litigation is at an end. *Gregory v. West Midland R. Co.*, 10 L. T. (N. S.) 38. Where a party obtained a mandamus to compel a company to summon a jury to assess compensation for lands taken, and a verdict was given for a less sum than the sum previously offered by the company, the court refused to grant the prosecutor the costs of the writ. *R. v. Waterford and Limerick R. Co.*, 13 Ir. Law R. 273. The usual course is for the costs to abide the result, in which case the costs of the rule and writ will be allowed with the rest. *R. v. Fall*, 1 Q. B. 636; *R. v. Justices of Lancashire*, 5 D. & L. 436; *R. v. J. of Cheshire*, 5 D. & L. 529; *R. v. J. of Surrey*, 19 L. J. (M. C.) 171; 9 Q. B. 37; but there may be exceptional cases, *R. v. Harden*, 1 Bail C. C. 214; and if the writ be obeyed without further contest, a distinct application must be made for them. *Corner's Crown Prac.* 225; see also *Archbold's Prac. of the Crown Office*, 286. For the law of costs in proceedings by mandamus, see *Gray on Costs*, 431; and as to costs of the statutory writ, see 17 & 18 Vict. c. 125, s. 70, post, 557; 23 & 24 Vict. c. 126, s. 32, post, 559.

Form of Writ.—The writ may bear teste on the day of its issuing, and may be made returnable forthwith, either in term or vacation; but time may be allowed to return it by the court or a judge, either with or without terms. 17 & 18 Vict. c. 125, s. 76, post, 558. A rule absolute for a mandamus must be drawn up at the Crown Office, but need not be served; the attorney may then draw and ingross the writ, or instruct counsel to do so, or to settle it. Any objection to it

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Return may be
pleaded to or
traversed.

and it be found either insufficient in law or false in fact, there then issues, in the second place, a peremptory mandamus to do the thing absolutely (*i*), to which no other return will be admitted but a certificate of perfect obedience and due execution of the writ. The sufficiency of the return, in point of law, was formerly determined in a summary way upon motion; but, as to the truth of its allegations, in point of fact, it was a rule that this could not be investigated by any further proceeding on the mandamus; the complaining party having no remedy in case the facts were untruly alleged, but to bring an action on the case for a false return. But by the 9 Anne, c. 20, in a mandamus for determining the right to a corporate office, and now, by 1 Will. 4, c. 21, in all cases of mandamus (*k*), the return may be pleaded to (*l*) or traversed by the prosecutor, and the other party may reply, take issue, or demur (*m*); and the same proceedings may be had as if an action on the case had been brought for making a false return, and, after judgment obtained for the prosecutor, he shall have a peremptory writ of mandamus. And it is also provided that the prosecutor, if successful, shall recover damages, and that the successful party shall in all cases, upon judgment after issue joined, or by default, be entitled to his costs. And by 6 & 7 Vict. c. 67, the prosecutor objecting to the validity of the return, shall do so by

for any defect may be made at any time. *R. v. Corporation of Poole*, 10 L. J. (Q. B.) 198. The writ must correspond with the rule, as well with respect to the act to be done, as with respect to the parties to whom it is to be directed. *Corner's Crown Prac.* 226; and see *R. v. East Lancashire R. Co.*, 9 Q. B. 980, as to the practice where the writ does not agree with the rule. In *R. v. Derbyshire, &c. R. Co.*, 3 E. & B. 788; 23 L. J. (Q. B.) 333, where a writ was directed to the company by a wrong name, the court ordered it to be amended after joinder in demurrer.

The writ consists of three parts:—1st, a statement by way of recital of the duty which ought to have been performed; 2ndly, a statement by way of recital of the demand and refusal to perform the duty, and the complaint thereof; 3rdly, the mandatory part, or command of the court to perform the act of duty, which must not go beyond the duty imposed by law, or the writ will be bad altogether. *R. v. Caledonian R. Co.*, 16 Q. B. 19. See further, *Archbold's Prac. of the Crown Office*, 210; *Corner's Crown Prac.* 227. But it is now to be observed that the provisions of the Common Law Procedure Acts are applicable to all pleadings and proceedings on prerogative writs. 17 & 18 Vict. c. 125, s. 77. See post, 558.

Service of the Writ.]—It seems to be sufficient to serve a copy of the writ on the party to whom the writ is directed. And even when the original writ was not shown at the

time the copy was served, the Court of Queen's Bench refused to set aside the service. *R. v. Birmingham and Oxford Junction R. Co.*, 22 L. J. (Q. B.) 195.

The Return.]—The return must either show that the party has performed what by the writ he was commanded to do—or it must show defects in the writ or previous proceeding not patent upon the face of it—or it must show a good cause for not having obeyed the writ. See *Archbold's Prac. of the Crown Office*, and *Corner's Crown Prac.*, where the practice relating to writs of mandamus is fully discussed.

(*i*) A peremptory mandamus issues in the same terms as the original writ; unless, therefore, the prosecutor succeeds as to the whole of the writ he is not entitled to a peremptory mandamus as to part. *R. v. Tithe Commissioners*, 14 Q. B. 459; *R. v. Caledonian R. Co.*, 16 Q. B. 19; *R. v. East and West India Docks and R. Co.*, 2 E. & B. 466, post, p. 552.

(*k*) It has been decided that, not only in terms, but in spirit and intention, this statute embraces all writs of mandamus whatever. *R. v. Fall*, 1 Q. B. 648. By sect. 4 of this statute, the court may enforce the provisions of the Interpleader Act in proceedings by mandamus. See 1 & 2 Will. 4, c. 58, s. 8.

(*l*) See *R. v. Ambergate, &c. R. Co.*, 17 Q. B. 957.

(*m*) *R. v. Ambergate, &c. R. Co.*, 1 E. & B. 373.

way of demurrer, in the like manner as in personal actions; and the court, if it adjudge that the writ is valid, but the return invalid, shall award a peremptory mandamus, and costs to be paid to the successful party (*n*); and in every case a writ of error may be prosecuted according to the ordinary course in personal actions (*o*). And lastly, by 17 & 18 Vict. c. 125, s. 77, the provisions of the Common Law Procedure Act, 1852, and of that act (the Common Law Procedure Act, 1854), so far as they are applicable, shall apply to the pleadings and proceedings upon a prerogative writ of mandamus issued by the Court of Queen's Bench (*p*). It therefore appears that the prerogative writ of mandamus is now subject to nearly the same rules as those which regulate ordinary actions brought in the superior courts.

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It has already been stated, that this writ is the proper remedy to enforce obedience to acts of Parliament; and, for this reason, parties who are entrusted by the Legislature to construct railways and other public works may be thus proceeded against. We proceed to consider under what circumstances the writ is applicable to such cases.

It was at one time supposed in England, as it seems to have been thought in Scotland, that permissive powers given by an act of Parliament to a railway company were obligatory upon them. The case of *Philip v. Edinburgh, Perth and Dundee R. Co.* (*q*) in Scotland, and that of *R. v. York and North Midland R. Co.* (*r*) in 1852 in England, so decided. This latter case, however, was reversed in 1853, in the Exchequer Chamber, and the former in the House of Lords in 1857 (*s*). It was decided in *York and North Midland R. Co. v. R.* (*t*), in the Exchequer Chamber, that if a statute merely directs "that it shall be lawful" for the company to make the railway, (which are the words usually inserted in special acts,) then no duty is cast upon them to make the railway, or even to complete it after they have formed one portion of it.

Does not lie if
Act permissive
only.

The facts in that case were shortly as follows:—In 1846, the company obtained an act empowering them to make a railway from York, through M. and C., to Beverley. They made a portion of that line

*York and North
Midland R. Co.
v. Reg.*

(*n*) See the pleadings and other proceedings in mandamus, Arch. Prac. of the Crown Office, 298.

(*o*) 3 Stephen's Commentaries, 685.

(*p*) And, by sect. 75 of the same act, the prerogative writ of mandamus is preserved. See post, 558.

(*q*) 2 Macq. 514.

(*r*) 1 E. & B. 858.

(*s*) Per Lord Wensleydale in *Scottish North-Eastern R. Co. v. Stewart*, 3 Macq. 414, where he added "But though the company were not bound to exercise the

powers because the legislature have given them, it was competent for them to *bind themselves* to do so, and *that* I think they have done by this agreement."

(*t*) 1 E. & B. 858; 7 Railw. C. 459; 22 L. J. (Q. B.) 225, cor. Jervis, C. J., Pollock, C. B., Cresswell and Williams, Js., and Parke, Platt and Martin, Bs.; also *Great Western R. Co. v. R.*, 1 E. & B. 874. When the works are partly completed it would seem that they may recover tolls for that part. *Tamar Navigation Co. v. Wagstaff*, 32 L. J. (Q. B.) 295.

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from York to M., but did nothing upon the remainder of it. The powers of their act expired as to so much of their line as lay between C. and Beverley before the mandamus was applied for; but in 1849, they obtained an act authorizing them to abandon the line between M. and C., and to substitute in lieu thereof the line under discussion. There were two prosecutors of the writ of mandamus, which required the company to purchase the lands and make the railway,—one of them had land on the proposed new line, and was a landowner on the line from York to M., his land having been taken for the purpose of this railway,—the other had land on the proposed line from M. to C., and his name was in the schedule to the act.

The judgment of the court was delivered by Jervis, C. J., who, after stating the facts, said:—

“First, does the statute of 1849 cast on the plaintiffs in error a duty to make this railway? Secondly, if it does not, is there, under the circumstances, a contract between the plaintiffs in error and the landowners, which can be enforced by mandamus? Thirdly, and failing these propositions, does a work which in its inception was permissive only, become obligatory by part performance? These questions will be found upon examination to exhaust the subject, and to comprehend every view in which the mandamus can be supported. In substance, do these acts of Parliament render the company, if they do not make this railway, liable to an indictment for a misdemeanor, and to actions by the parties aggrieved? For, if they do not, a mandamus will not lie; and thus the question depends entirely upon the construction of the special act, and the statutes incorporated therewith. The act of 1849 may cast the duty upon the plaintiffs in error, in one of two ways: it may do so by express words of obligation, or it may do so by words of permission only, if the duty can be clearly collected from the general purview of the whole statute. The words of the 3rd section of the act of 1849, ‘it shall be lawful for the said company to make the said railway,’ are permissive only and not imperative; and it is a safe rule of construction to give to the words used by the legislature their natural meaning, when absurdity or injustice does not follow from such a construction. Indeed, if there were any doubt upon this subject, other parts of the statute referred to in the argument clearly show that these words were intended to be permissive only. The distinction is well put by my Brother Erle (*u*): ‘The company are permitted at their option to take lands, turn roads, alter streams, and exercise other powers, and these matters are made lawful for them; but they are commanded to make compensation for lands taken, to substitute new roads for those they turn, and to perform other conditions relating to the exercise of their powers, and these matters are required from them.’ It seems, clear, therefore, that the duty is not cast upon the plaintiffs in error, by the express words of the statute of 1849; and, indeed, it was not so urged in the argument, nor was it so put by Lord Campbell in his judgment in the court below. But it does not follow, merely because the words of the 3rd section are permissive only, that there is no duty cast upon the plaintiffs in error by the statute, taken altogether, to make this railway. This point was not relied upon in this case in the court below; but it was made the distinct ground of a decision in another case in that court (*x*); and was much pressed in the argument before us in

(*u*) This was in the court below, where this learned judge dissented from the decision of the majority of the Court of Queen's Bench. See *R. v. York and North Midland*

R. Co., 7 Railw. C. 244; 1 E. & B. 178; 22 L. J. (Q. B.) 41; 17 Jur. 35.

(*x*) *R. v. Lancashire and Yorkshire R. Co.*, 7 Railw. C. 266; 1 E. & B. 288.

support of this judgment. It becomes necessary, therefore, to examine the statute in its general provisions, and to consider the grounds on which the Court of Queen's Bench proceeded in *R. v. Lancashire and Yorkshire R. Co.* We agree with Lord Campbell, that the portion of the line between M. and C., to which the mandamus applies, is not to be considered as a separate railway, or even as a separate branch of a railway, but is to be treated as if, in its present direction, it had been included in the act of 1846. The acts, then, taken together, in substance recite that it will be an advantage to the public if a railway is made from York to Beverley, through M. and C., according to certain plans and sections, deposited as required by the practice of Parliament, and referred to in the statute; and that the plaintiffs in error are willing to make that railway. On this basis the whole provisions are founded. It has been proved that the work will be advantageous to the public. It is assumed it will be profitable to the company, and that, therefore, they will willingly undertake it. Accordingly, the company are empowered to make this line; if they do make it, they may take land; but if they do take land they must make compensation. If necessary, they may turn roads or divert streams; but if they do, they must make new roads, and new channels for the streams they alter. Similar provisions pervade the whole statute; and, throughout, the command waits upon the authority, and the distinction between 'may' and 'must' is clearly defined. But as it is manifest that such general powers must stop competition, and may, to a certain extent, be injurious to landowners, on the line, the compulsory power to take land is limited to three years, and the time for making the railway to five, after which the powers granted to the company cease, except as to so much of the line as shall then have been completed; and the land, if taken by the company, reverts, on certain terms, to the original proprietors (*y*). An argument might have been founded on the terms in which the latter provision is contained. By the 10th section of the act of 1849, it is enacted, that the railway shall be completed within five years from the passing of that act. That section was not referred to in the argument for that purpose; but it might be said that these words were compulsory, and impose a duty on the company to make the line. The context of the section, however, when examined, shows that such is not the meaning of it. If not completed within five years, the powers of the act are to expire, except as to so much of such railway as shall then have been completed. If the section were intended to be obligatory, it would not contain this exception which contemplates that the line may be made in part. It is inconsistent to suppose that the legislature would say to the company in the same section,—You may complete a part only, if you can, in five years, and therefore as to that part the powers of the act shall continue; but you must complete the entire line in that time. Upon the whole, therefore, we find no duty cast upon the company to make this railway, in any part of this act of Parliament. On the contrary, the legislature seems to contemplate the possibility of the railway being made in part, or being totally abandoned. In the latter case, the powers expire in three or five years; in the former, the statute remains in force as to so much of the railway as shall have been completed within that time, and expires as to the residue. This provision is inconsistent with the intention to compel the company to make the entire line, as the consideration for the powers granted by the act.

"But it is said, that a railway act is a contract on the part of the company to make the line; and that the public is a party to that contract, and will be aggrieved if the contract may be repudiated by the company, at any time before it is acted upon. Though commonly so spoken of, railway acts, in our opinion, are not contracts, and ought not to be construed as such. They are what they purport to be,

(*y*) This was provided by section 218 of the Special Act, 6 Will. 4, c. clxxxi.

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and no more. They give conditional powers, which, if acted upon, carry with them duties ; but which, if not acted upon, are not, either in their nature or by express words, imperative on the companies to which they are granted. Courts of justice ought not to depart from the plain meaning of the words used in acts of Parliament. When they do, they make, but do not construe the laws. If it had been so intended, the statute should have required the company to make the line, in express terms. Indeed, some railway acts are framed upon this principle ; and to say that there is no difference between words of requirement, and words of authority, when found in such acts, is simply to affirm that the legislature does not know the meaning of the commonest expressions. But, if we were at liberty to speculate upon the intentions of the legislature, when the words are clear, and to construe an act of Parliament by our own notions of what ought to have been enacted upon the subject,—if, sitting in a court of justice, we could make laws,—much might be said in favour of the course which, in our opinion, is taken by the legislature on such subjects. Assuming that the line, if made, would be profitable to the public, that benefit may be delayed for five years, during which time competition is suspended. On the other hand, if the line would pay, it probably will be proceeded with, unless the company having the power is incompetent to the task. Individual landowners may be benefited by the expenditure of capital in their neighbourhood, without looking to the ultimate result ; but it is not for the public interest that the work should be undertaken by an incompetent company, nor that it should be begun, if, when made, it would not be remunerative. By leaving the exercise of the powers to the option of the company, the legislature adopts the safest check on abuse in either of those respects, namely, self-interest. It seems to us, therefore, that these statutes do not cast upon the plaintiffs in error this duty, either by express words or by implication ; that we ought to adhere to the plain meaning of the words used by the legislature, which are permissive only ; and that there is no reason, in policy or otherwise, why we should endeavour to pervert them from their natural meaning.

“ But it is said, that the landowners are in a better situation than the public at large, and that the privilege to take their lands is the consideration which binds the company to complete the railway ; that, during the currency of the three years, they are deprived of their full rights of ownership, and, if not to be compensated by the construction of the railway, they would in many cases suffer a loss, because, whilst a compulsory power of purchase subsists, they are prevented from alienating their lands or houses described in the books of reference, and from applying them to any purposes inconsistent with the claim that may be made to them by the railway company. In truth, they are not prevented from so doing, at any time before the notice to take their lands is given, if they act *bonâ fide* in the meantime ; the notice to take their lands being the inception of the contract between the landowners and the company. But, if this complaint were better founded, it does not follow, because certain landowners are subjected to temporary inconvenience for the performance of a public good, that, therefore, the company are bound to make the whole railway. If it were a contract between the landowners and the company, it would not be just that one should be bound and the other free. But, to assert that there is a contract between the landowners and the company, is to beg the whole question ; for, on this part of the case, the question is, whether there is such a contract ? As a matter of fact, we know that in many cases no such actual contract exists. Some few proprietors may desire and promote the railway, but many others oppose it, either from disinclination to the project, or with a view to make better terms. With the dissentients there is no contract, unless it be found in the statute ; and to the statute, therefore, we must look, to see what is the obligation that is cast upon the company in respect of the landowners upon the line. As, in the former case, the words upon

this subject are permissive only. The company may take land; if they do, they must make full compensation; and, in that state of things, if there be a bargain between the parties, what is the bargain? The company say, in the language of the statute, that the bargain is, that they shall make full compensation for the land taken, and no more; the prosecutors say, that the consideration to be paid for the land is the full compensation mentioned in the act, and also, the further consideration of the construction of the entire line of railway from York to Beverley. But, if this is the price which the prosecutors are to have, each landowner is entitled to the same value; and yet, by this mandamus, the other proprietors on the line, from M. to C., who, perhaps, are hostile to the application, are constrained to sell their lands for an inadequate consideration, viz. a full compensation, and a part only of the line of railway, to which, by the hypothesis, they were entitled by the original bargain. If this were the true meaning of the statute, it would indeed be unjust, more so than the imposition of these temporary inconveniences, to which it is said the landowners may be subject, and to which we have already referred. But that this is not the true meaning is clear from the words of the statute, which are permissive, and only impose the duty of making full compensation to each landowner, as the option of taking the land of each is exercised; and, further, from the section to which we have already referred, which contemplates the total abandonment of the line, or a part performance of it, and makes provision for the return of the land to the original proprietors in certain cases. Upon this part of the case, the language of Lord Eldon, in *Blakemore v. Glamorganshire Canal Co.* (z), was much pressed upon the court, but there is nothing in that language to which it is necessary to make the least exception; indeed, it is nothing more than an illustration of the obligatory nature of a duty imposed by acts of Parliament, which do impose a duty with reference to other persons. In that case, the statute had secured to B. the surplus water, and had commanded the company to do certain things that he might enjoy it. In discussing whether B.'s right under the statute was affected by his right before the statute, his lordship might well say, he considered the statute, the origin of B.'s right, in the light of a contract; and the statute then under discussion, containing express words of command, he might well add, that those who come for such acts of Parliament do, in effect, undertake that they shall do and submit to whatever the legislature empowers and compels them to do. As we understand them, the words used by Lord Eldon in no respect conflict with the view we take of this case; but, if they mean that words of permission only, when used in the class of statutes under consideration, should receive a construction different from their ordinary meaning, because, if construed otherwise, they might work injustice, with great respect for his high authority we dissent from that proposition. We agree upon this point with what is said by my Brother Alderson in *Lee v. Milner* (a).

"There remains but one further view of the case to be considered, and that we have partly disposed of in the observations we have already made; but, inasmuch as Lord Campbell proceeded on this ground only in the court below, although it was not much relied upon before us in the argument, we have, out of respect to his high authority, most carefully examined it, and are of opinion that the mandamus cannot be supported on the ground that the railway company, having exercised some of their powers, and made part of their line, are bound to make the whole railway authorized by their statutes. It is unnecessary here to determine the abstract proposition that a work, which, before it is begun, is permissive, is, after it is begun, obligatory. We desire not to be understood as assenting to the proposition of my Brother Erle, that many cases may occur where the exercise of some of the com-

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(z) 1 My. & K. 162.

(a) 3 Y. & C. 618.

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pulsory powers may create a duty to be enforced by mandamus ; and, on the other hand, we do not say that such may not be the law. If a company, empowered by act of Parliament to build a bridge over the Thames, were to build one arch only, it would be well deserving of consideration whether they ought to be indicted for a nuisance in obstructing the river, or for the non-performance of a duty in not completing the bridge. It is sufficient to say, that in this case there are no circumstances to raise such a duty, if such a duty can be created by the acts of the plaintiff himself. The plaintiffs in error have made the principal portion of their line, and they have abandoned the residue, from no corrupt motive, but because Beverley has already sufficient railway communication, and because the residue of the line passes through a country thinly populated, and, if made, would not be remunerative. But it is said, that the railway company are not in the situation of purchasers of land, with liberty to convert it to any purpose or to allow it to lie waste ; that they are allowed to purchase it only for a railway, and, having acquired it under the compulsory powers of the act, there must be an obligation upon the company to apply the land to that, and to no other purpose. Subject to the qualification in the act, this is undoubtedly true. Having acquired the lands of particular landowners, the company could not retain them by merely laying rails on the land so taken ; and, we agree it never was intended that the landowner should be left with a high mound or deep cutting running through his estate, and leading neither to or from any available terminus. The precaution against such a wasteful expenditure of capital may, perhaps, safely be left to the self-interest of the company ; but if such work were to be done, it would not be a practicable railway, and after five years the powers of the act would expire, and the land revert in the original proprietor. It is true, that he would sustain some inconvenience without the corresponding advantage of railway communication ; but, in the meantime, he would have received full compensation in the market value of the land, and for all damage by severance or otherwise, and would receive back the land on more reasonable terms. To be a railway it must have available termini. When the statutes passed, all persons supposed the termini would be York and Beverley ; and, if the argument be well founded, and the company are bound by taking land upon a portion of the railway to complete the whole line, it would seem to follow, that one of the prosecutors, by compelling the company to take his land on the line from M. to C., would thus entitle himself to a mandamus to compel them to make the line from C. to Beverley, and, the acts having expired, to apply to Parliament for a renewal of their powers for that purpose. But, although the termini were originally intended to be York and Beverley, it is plain that the legislature contemplated the possibility of the line being abandoned, or being only partially made, because, in the one case, the powers of the act were to cease, and in the other they were partially continued. An option, therefore, is given to some one. By the course taken, the Court of Queen's Bench has exercised that option, and said, the line is to be made not to Beverley, but to C. In our opinion that option is left to the company ; and the company having bona fide made an available railway over the land taken, the obligation to the landowner has, in that respect, been fulfilled.

“ The cases upon this subject are very few ; and the absence of authority is very striking, when we remember how many acts have passed *in pari materia*, not only for railways, but also for bridges and turnpike roads. Notwithstanding the numerous occasions on which such proceedings might have been taken, and the manifest interest of landowners to enforce their rights, no instance can be found of an indictment for disobeying such a statute, or of a mandamus for the purpose of enforcing it. If correctly reported, Lord Mansfield determined this point in *R. v. Proprietors*

of the *Birmingham Canal Navigation* (b), for he says, 'The act imports only an authority to the proprietors, not a command. They may desert or suspend the whole work, and *à fortiori* any part of it.' On the other side, the language of Lord Eldon, in *Blakemore v. Glamorganshire Canal Co.* (c), is referred to as an authority for this mandamus. In our opinion, it does not bear that construction, although it appears that the Court of Queen's Bench took a different view of that authority in the case of *R. v. Eastern Counties R. Co.* (d), and was inclined to act upon it, and award a mandamus. The writ was subsequently withheld in that case on another ground; but Lord Denman seems to have been of opinion that on a fit occasion a mandamus ought to go. That, and the recent cases in the Court of Queen's Bench (e), now under discussion, are the only cases which bear on the subject. We feel that Lord Denman and Lord Campbell are high authorities upon this or any other matter, and are both equally entitled to the respect of this court; but we are bound to pronounce our own judgment, and, after the most careful consideration, are of opinion that that judgment ought to be for the plaintiffs in error, and the result is that the judgment of the court below be reversed."

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In all cases falling within the principles laid down in the foregoing very important judgment, it may, therefore, now be assumed that a mandamus does not lie to compel a company to make or complete a railway.

But it must be carefully observed that this rule does not apply if the language used by the legislature is imperative; for if it be, a mandamus would undoubtedly lie (f).

Lies, if act is imperative.

There are many decisions which establish this principle. Thus, a peremptory mandamus was issued to compel the trustees of a turnpike road to fence a road made by them on the land of a private

(b) 2 Wm. Bl. 708.

(c) 1 My. & K. 154.

(d) 10 Ad. & E. 531.

(e) *R. v. York and North Midland R. Co.*, 22 L. J. (Q. B.) 41; 1 E. & B. 178; 17 Jur. 35; *R. v. Lancashire and Yorkshire R. Co.*, 22 L. J. (Q. B.) 57; 17 Jur. 62; 1 E. & B. 228; *R. v. G. W. R. Co.*, 22 L. J. (Q. B.) 65; 1 E. & B. 253; 17 Jur. 85. In these cases, the Court of Queen's Bench (Erle, J., *diss.*) awarded writs of mandamus requiring the respective defendants to make their railways in pursuance of the special acts.

(f) See *Great Western R. Co. v. R.*, 1 E. & B. 874. A landowner whose lands are required for the purposes of the railway, is a proper person to apply for a mandamus against the company to compel them to make it; and it is sometimes the practice to join, as applicants, some of the inhabitants of the districts. *R. v. York and North Midland R. Co.*, 1 E. & B. 178. It makes no difference that the company have not, at the time the application for the mandamus is made, taken any steps whatever, by issuing shares or giving notices, to carry out the undertaking. When the act of Parliament receives the royal assent, the obligation to make the railway attaches, and the company can only be relieved by obtaining another

act of the legislature. Nor need it be alleged in the writ, that money has been raised by shares or mortgage, for the purposes of the act. *R. v. Lancashire and Yorkshire R. Co.*, 1 E. & B. 228. It has been held to be no ground for quashing a writ, to allege that it had been obtained without the knowledge or assent of one of three partners, at whose instance the writ had been applied for. *R. v. London and South-Western R. Co.*, 13 Jur. (Q. B.) 10. A landowner cannot apply for an injunction to restrain a company from applying for an act to repeal a former act, and to prevent them from paying back deposits. *Anstruther v. East of Fife R. Co.*, 1 Macq. 98. Nor can he maintain a suit for specific performance to compel a company to make a railway in pursuance of the special act; the remedy is at law. *Heathcote v. North Staffordshire R. Co.*, 20 L. J. (Ch.) 82; *South Wales R. Co. v. Wythes*, 1 Kay & J. 186; 5 De G., M. & G. 880; *Hamilton v. Dunsford*, 6 Ir. Ch. Rep. 412. When an injunction, at the suit of the Attorney-General, was held not to lie against a company for not completing a railway, see *Attorney-General v. Birmingham and Oxford Junction R. Co.*, 15 Jur. 1024; and see post, tit. *Injunction*.

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individual; and the court decided that the liability to fence the road, imposed on all trustees of turnpike-roads by the statute, was not excused by a return which alleged that the trustees had no funds to make the fences, because, if the trustees had not adequate funds to make the fences, they ought not to have made the road (*g*).

Writs of mandamus have also been issued, requiring public companies to perform duties imposed upon them by acts of Parliament in the following instances:—To reinstate and lay down again a railway (*h*); to repair and amend the banks and bridges of a river course (*i*); to make alterations and amendments in sewers to prevent an offensive sewage from being discharged into a floating harbour (*k*); to restore a turnpike-road, carried over a railway by a bridge, to its former width (*l*); to excavate a road over which a bridge has been built, so as to leave a headway of sufficient height under the bridge (*m*); to establish an uniform rate of tolls (*n*).

Writ partly bad,
bad altogether.

But it is clearly settled, that if a mandamus commands the defendants to do several things, some of which they are not bound to do, it cannot be supported, even in respect of the things they are bound to do, and a peremptory mandamus will be refused (*o*).

Thus, where a mandamus suggested that a railway company had constructed a bridge to carry their line over a street alleged to be a turnpike-road, and had made the ascent of the bridge too steep, and also that they had deviated from the levels of the railway, to an extent exceeding the prescribed limits, and commanded them to make the ascent of the bridge, and also the levels, in conformity with the act, and upon the trial of issues raised upon the return, it was found that the street in question was a public highway but not a turnpike-road; it was held, that as the first part of the writ could not be supported no peremptory mandamus could be awarded (*p*). And a writ is bad if it commands the execution of a work in a spe-

(*g*) *R. v. Trustees of Luton Roads*, 1 Q. B. 860; and see *R. v. Commissioners of Woods and Forests*, 19 L. J. (Q. B.) 497.

(*h*) *R. v. Severn and Wye R. Co.*, 2 B. & Ald. 646. But Lord Denman did not quite approve of that decision. See 11 A. & E. 72; and *semble*, that after the decisions mentioned ante, p. 545, such a mandamus would only be granted where the act of Parliament was *obligatory* to make and maintain the railway. See *Leominster Canal Navigation v. Shrewsbury and Hereford R. Co.*, 26 L. J. (Ch.) 764, where Wood, V. C., suggested that a mandamus was the proper remedy to enforce an act of Parliament which “authorized and required” the defendants to purchase a canal.

(*i*) *R. v. Bristol Dock Co.*, 2 Q. B. 64; 1 Railw. C. 548; 2 *Id.* 599; ante, 414; *R. v. Ouze Bank Commissioners*, 3 A. & E. 544.

(*k*) *R. v. Bristol Dock Co.*, 6 Barn. &

Cress. 181; ante, 411.

(*l*) *R. v. Birmingham and Gloucester R. Co.*, 2 Q. B. 47; 2 Railw. C. 694; ante, 399; *R. v. London and Birmingham R. Co.*, 1 Railw. C. 317; ante, 399. And see the other cases, ante, 396.

(*m*) *R. v. Manchester and Leeds R. Co.*, 3 Q. B. 528; 1 Railw. C. 523; 2 *Id.* 711; ante, 397; *R. v. Eastern Counties R. Co.*, 2 Q. B. 569; 3 Railw. C. 22; ante, 400; *R. v. Caledonian R. Co.*, 20 L. J. (Q. B.) 147; 16 Q. B. 19; ante, 363.

(*n*) *Clarke v. Leicestershire and Northamptonshire Union Canal Co.*, 6 Q. B. 898.

(*o*) *R. v. Tithe Commissioners of England and Wales*, 14 Q. B. 459; 19 L. J. (Q. B.) 177; 14 Jur. 290; *R. v. Caledonian R. Co.*, *ubi supra*.

(*p*) *R. v. East and West India Docks and Birmingham Junction R. Co.*, 2 El. & B. 466; 22 L. J. (Q. B.) 380.

cified manner where the company may exercise an option; as where it required a road to be carried by a bridge over the railway, the company having an option, under the statute, to carry the railway over the road (*q*). But a writ may be awarded to make such parts of the line of a railway as can be made, although, the compulsory powers having expired, other portions of the line cannot be completed (*r*).

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It has been doubted whether a mandamus will lie to compel the company to make sufficient watering-places for cattle on intersected lands, as directed by section 68 of the Railways Clauses Consolidation Act, or whether the omission to do so is not merely a subject for compensation under the statute. Such a writ is clearly bad if it directs the company to provide a pond in each of several portions of the fields which have been severed, as this is a larger provision than the statute requires the company to make (*s*).

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It is a good return to a writ to compel the making of a railway, to allege that the compulsory powers for the purchase of the necessary lands have expired (*t*). But where it appeared that there was time to give the necessary notices to take lands before the expiration of the period for taking the lands compulsorily, the court awarded a mandamus (*u*). It has also been held to be a good return to say that the company have not been able to procure a subscription for the whole of their capital, as required by the 8 & 9 Vict. c. 18, s. 16; and the prosecutors cannot answer by way of estoppel that the company have been exercising their compulsory powers to acquire the lands of another person to make the railway, as that was *res inter alios acta* (*x*). But it is not a good return to say, that the line of railway has become unnecessary, or that it will prove unremunerative, or that no reasonable probability exists that sufficient funds can be raised, although absolute exhaustion of funds from unforeseen casualties might, under circumstances, be a good return (*y*). We have already seen that where the lands were required by commissioners to form a public park, the allegation of want of funds was held to be a sufficient answer to a writ commanding the commissioners to purchase lands which they had given a notice to the owner to treat for (*z*).

Return to writ.

(*q*) *South-Eastern R. Co. v. R.*, 20 L. J. (Q. B.) 428; 17 Q. B. 485; 4 H. L. C. 471; 17 Jur. 901.

(*r*) *R. v. York and North Midland R. Co.*, 1 E. & B. 178.

(*s*) *York and North Midland R. Co. v. Milner*, 15 L. J. (Q. B.) 378.

(*t*) *R. v. L. and N. W. R. Co.*, 20 L. J. (Q. B.) 399; 16 Q. B. 864.

(*u*) *R. v. York, Newcastle and Berwick R. Co.*, 20 L. J. (Q. B.) 503; 16 Q. B. 886.

And see *R. v. Great Western R. Co.*, 1 E. & B. 774; 17 Jur. 817.

(*x*) *R. v. Ambergate, &c. R. Co.*, 22 L. J. (Q. B.) 191; 17 Jur. 668; 1 E. & B. 372.

(*y*) *R. v. York and North Midland R. Co.*, 1 E. & B. 178, 858; 22 L. J. (Q. B.) 41; 17 Jur. 35; and see *R. v. Lancashire and Yorkshire R. Co.*, 20 L. J. (Q. B.) 507, note (5); 1 E. & B. 228.

(*z*) Ante, 182.

Other Cases in
which Writs of
Mandamus have
been issued.

We now turn to another class of cases. We have seen, in a former part of this work (*b*), that the statutes make it obligatory on companies, in certain cases, to issue a warrant to the sheriff, requiring him to summon a jury to assess the compensation due to persons who have claims in respect of damage caused by the execution of the railway works; and it is clear, that if the company should neglect or refuse to issue such a warrant, when duly required so to do, the writ of mandamus is the suitable remedy (*c*). So, if the sheriff, or other officer who holds the inquisition, refuses to allow the inquiry to proceed, upon the ground that the applicant is not entitled to compensation, mandamus will lie to compel the due execution of the precept (*d*). So, if the presiding officer refuse to allow costs to a party entitled to receive them, a mandamus will be awarded requiring the costs to be allowed (*e*).

Refused where
debt lay.

It was also the practice (*f*) to enforce the payment of compensation money awarded by a jury, by resorting to a writ of mandamus (*g*); but, in *Corrigal v. London and Blackwall R. Co.* (*h*), the Court of Common Pleas decided that an action of debt may be brought on an inquisition and verdict, and that remedy must now be resorted to in such cases: and accordingly, in a subsequent case, where a statute, empowering a company to build a bridge over the Ouse, recited that the building of such bridge might diminish the tolls received at a neighbouring bridge belonging to another company, and enacted, that, if there should be an annual decrease in the tolls of the last-mentioned bridge, the railway company should forthwith pay the bridge company a sum equal to ten years' purchase of such annual decrease: it was decided, that debt lay against the company for the amount; and that a mandamus to pay was not a more effectual remedy, and therefore ought not to be granted (*i*).

Where a sum of money was awarded to a creditor by an arbitrator, it was held that a mandamus lay to compel the company to pay the amount found to be due, where it appeared that by the statute incorporating the company the creditor was unable to issue execution

(*b*) Ante, 300.

(*c*) See numerous instances in the collection of compensation cases, ante, 218 et seq. If, however, compensation is claimed under 8 & 9 Vict. c. 18, s. 68, it is the usual course to bring an action at law on that section, if the company should make default in issuing the warrant; see ante, 197. It will be observed, however, that the lands must be *actually* taken, or *actually* injuriously affected, to bring the case within sect. 68. See ante, 199.

(*d*) *Walker v. London and Blackwall R. Co.*, 3 Q. B. 744. But if a statute does not allow the removal of proceedings by certiorari (see ante, 310), the court will not indirectly bring them under review by mandamus. *R.*

v. Justices of the West Riding of York, 1 A. & E. 563.

(*e*) *R. v. Justices of the City of York*, 1 A. & E. 828; ante, 294, 321; *R. v. Gardner*, 6 A. & E. 112; ante, 294; *R. v. Sheriff of Warwickshire*, 2 Railw. C. 661; ante, 294, 321.

(*f*) See ante, 320.

(*g*) *R. v. Nottingham Old Waterworks Co.*, 6 A. & E. 355; *R. v. Trustees of Swansea Harbour*, 8 A. & E. 439; *R. v. Deptford Pier Co.*, 8 A. & E. 910.

(*h*) 5 M. & G. 219. See *Cooling v. Great Northern R. Co.*, 15 Q. B. 486.

(*i*) *R. v. Hull and Selby R. Co.*, 6 Q. B. 70; and see other cases to the same effect, ante, 320, note (*f*).

against the individuals who formed the company or against their effects (*k*). But if a statute directs that costs shall be taxed and levied, it will be premature to apply for a mandamus before the costs are taxed and an attempt made to levy them in the prescribed manner (*l*). So, where a company was incorporated, with power to make calls, and to sue and be sued in the name of the treasurer or any director, and an action was brought against the treasurer and judgment entered up against the company, who appeared to have no assets, a mandamus was refused to compel the company to pay the amount recovered by the judgment, upon the ground that as the plaintiff had entered up his judgment not against the public officer but against the company, he was in a situation to enforce the ordinary legal remedy of an execution against the goods of the company. It was also decided, that the court would not order a mandamus to go, merely because under the circumstances the execution might produce no fruits; and the court intimated a very strong opinion that a mandamus would lie to compel the company to proceed to enforce the payment of calls, if it were shown that judgments recovered against the company were unsatisfied for want of assets (*m*).

Other Cases in which Writs of Mandamus have been issued.

But the court will not in any case grant a mandamus to enforce the general law of the land which may be enforced by action (*n*). Thus, in a case where a railway company were common carriers, and therefore liable to carry all goods if they had room and means (*o*), a mandamus was refused to compel them to convey goods, although they had agreed with certain persons to carry their goods to the exclusion of all others (*p*); it appearing that there was no clause in their act of incorporation which required them to carry all goods offered for conveyance. Neither will a mandamus lie where the right is merely equitable, and where there is no legal right (*q*). Thus, where a mandamus was applied for to compel the trustees of a turnpike to pay a mortgage debt, which, as we have already shown, cannot be recovered by an action at law (*r*), Crompton, J., refused the application, upon the ground that there was nothing to take the case out of the general rule, and that the facts showed that the case was one peculiarly fit for equitable relief (*s*). It has been said that the court will never grant a writ of mandamus except to compel the performance of public

When refused.

(*k*) *R. v. St. Katherine's Dock Co.*, 4 B. & Ad. 360; *Corpe v. Glyn*, 3 B. & Ad. 801; and see 6 Q. B. 76, note (*d*).

(*l*) *R. v. London and Blackwall R. Co.*, 15 L. J. (Q. B.) 42; 3 D. & L. 399, ante, 322.

(*m*) *R. v. Victoria Park Co.*, 1 Q. B. 288. See also the remark made on this case ante, 96.

(*n*) But if part of an injury for which a party seeks compensation has been done under the authority of a statute, the proper remedy for that part is by mandamus, and

not by action at law. *R. v. North Midland R. Co.*, 2 Railw. C. 1; ante, 233. See also *Elwell v. Birmingham Canal Co.*, 6 L. T. 434.

(*o*) See ante, 517.

(*p*) *Ex parte Robins*, 7 Dowl. P. C. 566; ante, 518, note (*g*).

(*q*) *R. v. Marquis of Stafford*, 3 T. R. 646; but see *Edwards v. Lowndes*, 1 E. & B. 92; 20 L. J. (Q. B.) 104.

(*r*) Ante, 129.

(*s*) *R. v. Trustees of Balby Turnpike*, 22 L. J. (Q. B.) 164; 1 Bail C. C. 134.

Other Cases in which Writs of Mandamus have been issued.

duties. On this ground a mandamus was refused to compel the Bank of England, at the instance of one of its members, to produce their half-yearly accounts for the purpose of declaring a dividend (*t*); and in like manner the writ was refused to require a private trading company, acting under a royal charter, to permit a transfer of stock to be made in their books (*u*). And a mandamus requiring the company to remove the common seal of the company, which had been improperly affixed, has been refused (*x*). But a mandamus may be obtained to compel the production of a register of shareholders to enable a creditor to proceed against them (*y*), also to elect directors (*z*); and some of the modern cases already cited, in which the writ has been granted (*a*), show that the remedy by mandamus is now more extensively applied than it was formerly.

Must be applied for within reasonable time.

Lastly, it may be observed, that a mandamus must be applied for within a reasonable time after the injury has been sustained (*b*). Thus, where trustees of a turnpike-road completed a portion of the roads and collected tolls, and twelve years after these roads had been completed, and seven years after the compulsory powers for taking lands had expired, a mandamus was applied for to compel the trustees to make certain branch roads, but it appeared that during the twelve years a railway, which affected the receipt of tolls on the road, had been constructed, and expensive buildings had been erected on some of the lands over which the new roads must have passed, and no explanation was offered by the prosecutor of the writ to account for the delay in applying for a mandamus, the court, in the exercise of its discretion, refused to issue the writ, and said there was neither reason nor authority to support the application (*c*). But in some cases where compensation is claimed, it is necessary to wait until all the damage has been sustained, and then a jury may assess compensation for the whole (*d*).

We now reach the second branch of our subject.

The statutory writ of mandamus.

2. The foregoing remarks on prerogative writs seem to furnish the best commentary which can be offered by way of introducing the new

(*t*) *R. v. Bank of England*, 2 B. & Ald. 620. In *R. v. Master and Wardens of the Merchant Tailors' Co.*, 2 B. & Ad. 115, an application made by members of a corporate body for a mandamus to inspect the documents of the corporation was refused, it not being shown that such inspection was necessary, with reference to some specific dispute or question depending, in which the applicants were interested.

(*u*) *R. v. London Assurance Co.*, 5 B. & Ald. 899.

(*x*) *Ex parte Nash*, 15 Q. B. 92; 19 L. J. (Q. B.) 296; 14 Jur. 574; ante, 94, n. (*i*).

(*y*) *R. v. Derbyshire, &c. R. Co.*, 3 E. & B. 784; 23 L. J. (Q. B.) 333.

(*z*) Ante, 46.

(*a*) And see *R. v. Worcester Canal Co.*, 1 Man. & Ry. 529.

(*b*) *R. v. Stainforth and Keadley Canal Co.*, 1 M. & S. 32; *R. v. Commissioners of Cockermouth Inclosure Act*, 1 B. & Ad. 378; *R. v. Leeds and Liverpool Canal Co.*, 11 A. & E. 316.

(*c*) *R. v. Halifax Road Trustees*, 12 Q. B. 448.

(*d*) See ante, 200; also *Ex parte Parkes*, 9 Dowl. P. C. 614. When a jury are not entitled to assess prospective damages, see *Lee v. Milner*, 2 M. & W. 824, ante, 239; *Thicknesse v. Lancaster Canal Co.*, 4 M. & W. 472.

writ of mandamus, which, as we have seen, may now be obtained in either of the Superior Courts of Common Law, by commencing an action in pursuance of the Common Law Procedure Act, 1854. It is difficult to predicate whether this statutory remedy will supersede the old practice of applying for the prerogative writ. The latter form of proceeding is carefully preserved by a clause in the statute, and provisions are made for accelerating the proceedings and simplifying the pleadings (*e*). It may therefore be found desirable, especially in important cases, still to resort to the Court of Queen's Bench for the prerogative writ, but as the powers which enable the court to direct that the act required by a mandamus to be done may be done by the plaintiff or some other person at the expense of the defendant, are only applicable to proceedings under the statutory writ, and as a writ of injunction may, as we shall see hereafter (*f*), be obtained after an action has been brought, it seems that these additional powers are well calculated to recommend the adoption of the new remedy in cases where summary redress is sought for. The following are the clauses in the 17 & 18 Vict. c. 125, which relate to the statutory writ of mandamus, and the sections which apply to the prerogative writs are repeated, so as to present at one view the whole of the important changes which are introduced by the new statute.

"Sect. 68. The plaintiff in any action in any of the superior courts, except replevin and ejectment, may endorse upon the writ and copy to be served a notice that the plaintiff intends to claim a writ of mandamus, and the plaintiff may thereupon claim in the declaration, either together with any other demand which may now be enforced in such action, or separately, a writ of mandamus commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested.

Action for mandamus to enforce the performance of duties.

"69. The declaration in such action (*g*) shall set forth sufficient grounds upon which such claim is founded, and shall set forth that the plaintiff is personally interested therein, and that he sustains or may sustain damage by the nonperformance of such duty, and that performance thereof has been demanded by him and refused or neglected.

Declaration in action for mandamus.

"70. The pleadings and other proceedings in any action in which a writ of mandamus is claimed shall be the same in all respects as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages.

Proceedings upon claim for mandamus.

"71. In case judgment shall be given to the plaintiff that a mandamus do issue (*h*), it shall be lawful for the court in which such judgment is given, if it shall see fit, besides issuing execution in the ordinary way for the costs and damages, also to issue a peremptory writ of mandamus to the defendant, commanding him forthwith to perform the duty to be enforced.

Judgment and execution.

"72. The writ need not recite the declaration or other proceedings, or the matter therein stated, but shall simply command the performance of the duty, and in other respects shall be in the form of an ordinary writ of execution, except that it shall be directed to the party and not to the sheriff, and may be issued in term or vacation, and returnable forthwith; and no return thereto except that of compliance shall be allowed, but time to return it may, upon sufficient grounds, be allowed by the court or a judge, either with or without terms.

Form of peremptory writ.

(*e*) See sects. 75, 76, 77, post, 558.

265; 29 L. J. (Q. B.) 40.

(*f*) Post, 576.

(*h*) See form of judgment, 14 C. B. 790;

(*g*) See *Ward v. Lowndes*, 28 L. J. (Q. B.)

4 E. & B. 381.

*The Statutory
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Effect of writ of mandamus, and proceedings to enforce it.

The court may order the act to be done at the expense of the defendant.

Prerogative writ of mandamus preserved.

Proceedings for prerogative writ of mandamus accelerated.

Proceedings on prerogative writ of mandamus.

Meaning of statute.

Norris v. Irish Land Co.

"73. The writ of mandamus so issued as aforesaid shall have the same force and effect as a peremptory writ of mandamus issued out of the Court of Queen's Bench, and in case of disobedience may be enforced by attachment.

"74. The court may, upon application by the plaintiff, besides or instead of proceeding against the disobedient party by attachment, direct that the act required to be done may be done by the plaintiff, or some other person appointed by the court, at the expense of the defendant, and upon the act being done the amount of such expense may be ascertained by the court, either by writ of inquiry or reference to a master, as the court or a judge may order; and the court may order payment of the amount of such expenses and costs, and enforce payment thereof by execution.

"75. Nothing herein contained shall take away the jurisdiction of the Court of Queen's Bench to grant writs of mandamus; nor shall any writ of mandamus issued out of that court be invalid by reason of the right of the prosecutor to proceed by action for mandamus under this act.

"76. Upon application by motion for any writ of mandamus in the Court of Queen's Bench, the rule may in all cases be absolute in the first instance if the court shall think fit; and the writ may bear teste on the day of its issuing, and may be made returnable forthwith, whether in term or in vacation, but time may be allowed to return it by the court or a judge, either with or without terms.

"77. The provisions of 'The Common Law Procedure Act, 1852,' and of this act, so far as they are applicable, shall apply to the pleadings and proceedings upon a prerogative writ of mandamus issued by the Court of Queen's Bench."

"It is quite clear that this act did not intend to give a Court of Common Law the power to decree specific performance of a private contract; and where the duty sought to be enforced by mandamus arises merely from a personal contract, to grant a mandamus would be in effect to decree specific performance of such a contract. But in the present case the duty does not, as in *Benson v. Paul* (i), arise merely from a personal contract; it arises under the royal charter, and the act to be done is one in which the public as well as the plaintiff are interested. I am reported to have said, in *Benson v. Paul* (and no doubt accurately), that I thought the enactment must be confined to such duties as might have been enforced by a prerogative writ of mandamus; but though upon consideration I am not prepared to say that that is the exact limit, it is sufficient to say in the present case that a prerogative writ would be granted, and that therefore the plaintiff is entitled to the writ he claims in his declaration. A prerogative writ has been granted under similar circumstances. The writ is to order that to be done which ought to be done by the company, pursuant to the deed of settlement executed under the charter. This is quite distinct from the act sought to be enforced in *Benson v. Paul*; and if we had held the statute to extend to such a case as that, it would be to extend it, as I then pointed out, even to enforce a promise to marry; an extent which was clearly never contemplated by the legislature. But *when the writ of mandamus is asked to compel the fulfilment of a duty arising out of the requirements of an act of Parliament or of a royal charter, and a personal*

(i) 6 E. & B. 273; 25 L. J. (Q. B.) 274.

grievance also arises from the non-performance of the duty, then the act clearly applies. The present is exactly that case. The company, incorporated by charter, refuse to register the plaintiff as a shareholder, and the court would have granted a mandamus in such a case even before the statute (*k*)."

*The Statutory
Writ of
Mandamus.*

By the 23 & 24 Vict. c. 126, s. 32, it is enacted, that—

"In all cases in which a writ of mandamus or of injunction is issued under the provisions of the Common Law Procedure Act, 1854, such writ shall, unless otherwise ordered by the court or a judge, in addition to the matter directed to be inserted therein, command the defendant to pay to the plaintiff the costs of preparing, issuing and serving such writ, and payment of such costs may be enforced in the same manner as costs payable under a rule of court are now by law enforceable."

Costs of mandamus and injunction may be included in writ.

(*k*) Per Lord Campbell, C. J., in *Norris v. Irish Land Co.*, 27 L. J. (Q. B.) 115; '8 E. & B. 512. And see *Ward v. South-Eastern R. Co.*, 29 L. J. (Q. B.) 177. See

also *Bush v. Beavan*, 32 L. J. (Exch.) 54, where it was held, that the action, like the writ, of mandamus (*ante*, p. 554) does not lie where there is any other remedy.

CHAPTER II.

ON INJUNCTION.

I. <i>Injunctions in Equity</i> . . .	560	|	<i>Common Law Procedure Act,</i>
II. <i>Injunctions at Law under the</i>			1854
			576

AN injunction is a prohibitory writ, to restrain the defendant from using some legal right, the exercise of which would be contrary to equity and good conscience; or from doing some act inconsistent with the admitted or probable legal rights of the complainant, and with the due preservation of the property affected by the act sought to be restrained.

These writs were formerly only issued out of Chancery, but now, by the Common Law Procedure Act, 1854 (*a*), parties who have commenced actions in the Superior Courts of Common Law may also, in certain cases, claim a writ of injunction, and if the writ be obtained and disobeyed, an attachment will issue from the Common Law Court.

We shall endeavour, first, to give a short summary of the cases which were determined before any jurisdiction was given to the Courts of Common Law, and this will prepare us for considering, secondly, the effect of the Common Law Procedure Act.

I. *Injunctions in Equity.*

Injunctions in equity.

Injunctions in equity are of two kinds. An injunction of the first kind is grantable as an order of course, upon the defendant's making default in appearing, &c. An injunction of the second kind is, on the contrary, always granted upon merits, and may, under circumstances, be granted at any stage of a suit. An injunction of the first kind is properly called a common injunction, and is that which is most generally obtained in suits where the object is to stay proceedings at law. An injunction of the second kind is called a special injunction, because it is granted upon a special application, and not as an order of course (*b*).

(*a*) 17 & 18 Vict. c. 125, s. 79.

(*b*) Drewry on Injunctions, Introd. vi. By 15 & 16 Vict. c. 86, s. 58, it is enacted, "That the practice of the Court of Chancery with respect to injunctions for the stay of proceedings at law shall, so far as the nature of the case will admit, be assimilated to the

practice of such court with respect to special injunctions generally, and such injunctions may be granted upon interlocutory applications supported by affidavit, in like manner as other special injunctions are granted by the said court."

Injunctions are applied for in cases of waste, and similar acts of injury to property, and they are frequently resorted to for the purpose of restraining railway companies from doing illegal acts. The general principle by which equity is guided in administering such relief, appears to be this, i. e. that where a company go beyond the powers which the legislature has given them, and interfere with the property of individuals, it is the duty of the court to interfere, for the purpose of strictly keeping the company within those limits which the legislature has thought proper to prescribe for the exercise of their powers (c).

*Where Injunction
is the proper
Remedy to
restrain Railway
Companies
from doing illegal
Acts.*

Lord Cottenham, C., in one of the earliest applications for an injunction against a railway company (d), observed upon this subject:—

*River Dun Navigation Co. v.
North Midland
R. Co.*

“I am not at liberty, (even if I were in the least disposed, which I am not,) to withhold the jurisdiction of this court, as exercised in the first case in which it was exercised, that of *Agar v. Regent's Canal Co.* (e), where Lord Eldon proceeds simply on this,—that he exercised the jurisdiction of this court for the purpose of keeping these companies within the powers which the acts give them; and a most wholesome exercise of the jurisdiction it is; because, great as the powers necessarily are to enable the companies to carry into effect works of this magnitude, it would be most prejudicial to the interests of all persons with whose property they interfere, if there were not a jurisdiction continually open and ready to exercise its power, for the purpose of keeping them within that limit which the legislature has thought proper to prescribe for the exercise of their powers. On that ground I should never be reluctant to entertain any such application. I think it most essential to the interests of the public, that such jurisdiction should exist, and should be exercised whenever a proper case for it is brought before the court, otherwise the result may be, that, after your property has been taken and destroyed,—after your house has been pulled down, and a railway substituted in its place, you may have the satisfaction, at a future period, of discovering that the railway company were wrong. It would be a very tardy recompense, and one totally inadequate to the injury of which the party has to complain; and individuals would be made to contend with companies who often have vast sums of money at their disposal, and that too not the money of the persons who are contending. It is a most material point to consider, when you enter into a contest with an individual, whether he is spending his own money, or money over which he has a control, or in which he has a comparatively small interest. If these companies go beyond the powers which the legislature has given them, and in a mistaken exercise of those powers interfere with the property of individuals, this court is bound to interfere. That was Lord Eldon's ground in *Agar v. Regent's Canal Co.*, and I see no reason whatever to depart from the rule there laid down and acted upon; but then, of course, it must be a case in which the court is very clearly of opinion that the company are exceeding the powers which the act has given them.”

(c) See *Webb v. Manchester and Leeds R. Co.*, 4 My. & Cr. 116; 1 Railw. C. 576; ante, 424. Parties whose private rights are injured must apply to the courts for redress, for they may not take the law into their own hands, and determine and enforce the mode

and manner in which they would stop illegal proceedings. See *London and Brighton R. Co. v. Blake*, 2 Railw. C. 322; ante, 410.

(d) *River Dun Navigation Co. v. North Midland R. Co.*, 1 Railw. C. 153.

(e) *Coop.* 77.

Where Injunction
is the proper
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Acts.

In accordance with the doctrine thus clearly laid down, injunctions have been obtained against railway companies in the following instances, viz., where lands are sought to be taken compulsorily, after the time limited by the legislature, or lands not authorized to be taken (*f*); where an entry has been unlawfully made on lands authorized to be taken without paying the price (*g*); where roads, bridges, stations or other works are constructed contrary to the stipulations contained in the railway acts (*h*); where proceedings are commenced to take lands, or execute works, contrary to an agreement previously made between the parties (*i*); where works are without authority constructed, which have a direct tendency to injure adjoining lands (*j*); where roads are improperly obstructed or interfered with, by depositing materials thereon (*k*); and where more damage is done in carrying on the works than the necessity of the case requires (*l*). In all such and similar cases the remedy by injunction is applicable.

But, as we have already seen (*m*), if a doubtful or unfounded claim is made for compensation under sect. 68 of the Lands Clauses Consolidation Act, the court will not grant an injunction to restrain proceedings taken under that statute (*n*).

(*f*) *River Dun Navigation Co. v. North Midland R. Co.*, 1 Railw. C. 135; *Stone v. Commercial R. Co.*, 4 My. & C. 122; *Mouchet v. Great Western R. Co.*, 1 Railw. C. 567; ante, 259.

(*g*) *Hyde v. Great Western R. Co.*, 1 Railw. C. 277; *Robertson v. Same*, 1 Railw. C. 459; *Jones v. Same*, 1 Railw. C. 684.

(*h*) *Kemp v. London and Brighton R. Co.*, 1 Railw. C. 495; ante, 181; *Bell v. Hull and Selby R. Co.*, 1 Railw. C. 616; *Gordon v. Cheltenham R. Co.*, 2 Railw. C. 812; *Attorney-General v. Eastern Counties R. Co.*, 2 Railw. C. 823; ante, 425; *London and Brighton R. Co. v. Cooper*, ante, 424; *Lord Petre v. Eastern Counties R. Co.*, ante, 387; *Coates v. Clarence R. Co.*, 1 Russ. & My. 181; *Manser v. Northern and Eastern Counties R. Co.*, 2 Railw. C. 380; ante, 395.

(*i*) *Lord Petre v. Eastern Counties R. Co.*, 1 Railw. C. 462; see ante, 387; *Duke of Norfolk v. Tennant*, 16 Jur. 398; ante, 243.

(*j*) *Dawson v. Paver*, 4 Railw. C. 81.

(*k*) *Semple v. London and Birmingham R. Co.*, 1 Railw. C. 480.

(*l*) *Manser v. Northern and Eastern Counties R. Co.*, ubi supra; *Attorney-General v. London and South-Western R. Co.*, 3 De G. & S. 439; ante, 405.

(*m*) Ante, 305; and see *Cromford Canal Co. v. Cutts*, 5 Railw. C. 442; ante, 230.

(*n*) If a notice is given that lands will be required, and the company take no further steps and do not enter on the lands, we have seen that the claimant cannot take proceedings, under sect. 68, but has a remedy by mandamus; ante, 199. And there is a case which determines that, in addition to the remedy by mandamus, the landowner

may apply to chancery for a specific performance; *Walker v. Eastern Counties R. Co.*, 5 Railw. C. 469, per Wigram, V. C. See remarks of Lord Cottenham, C., on this case in *Adams v. London and Blackwall R. Co.*, 2 Macn. & G. 132. But in a subsequent case, where a company had entered upon the lands and paid a deposit, and given bond, under sect. 85, and the landowner applied to the company, and desired them to summon a jury to assess the compensation, which they refused to do, Lord Cottenham, C., denied that the Court of Chancery had jurisdiction to enforce the further proceedings, and said, that if it should be inferred that the court would generally lend its assistance to compel performance of the provisions of the acts under which railways were formed and maintained, a proposition would be raised, which, if established, would lead to consequences of the most serious importance; and he said that the proper remedy was for the land-owner to take proceedings at law under the 68th section of the statute, if the company refused, upon notice, to proceed to assess the compensation: *Adams v. London and Blackwall R. Co.*, 2 Macn. & G. 118; 6 Railw. C. 286; and see *Williams v. South Wales R. Co.*, 13 Jur. 443. See also *Haynes v. Haynes*, 1 Dr. & Sm. 426; 30 L. J. (Ch.) 578, where all the authorities on this subject are elaborately reviewed by Kindersley, V. C., the inference being that *Walker v. Eastern Counties R. Co.* cannot be maintained. In *Smith v. Dublin and Bray R. Co.*, 3 Ir. Ch. Rep. 225 (1853), specific performance was granted against the company. It seems, however, that, although a statute may direct that disputes arising

It has been also decided, that if the Board of Trade, after inspecting a railway about to be opened under the powers conferred on them (*o*), direct the company to postpone the opening of the railway, and the company, notwithstanding the notice, proceed to open the railway for traffic, it is competent for the Attorney-General as *parens patriæ* to apply to a court of equity for an injunction to restrain the company from using the railway (*p*), and Sir J. Romilly, M. R., granted an injunction, and refused to inquire into the sufficiency of the reasons which induced the Board of Trade to withhold their consent, saying, that the company could apply to the Court of Queen's Bench for a mandamus to the Board of Trade, to dissolve the prohibition, if they wished to raise that point (*q*). So also an injunction has been granted, at the instance of the Attorney-General, to prevent a railway company acting as coal dealers (*r*).

Where Injunction
is the proper
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Companies
from doing illegal
Acts.

There is also another class of cases to which the remedy by injunction is applicable. It seems, that, if it can be clearly made out, that a railway company cannot perform the undertaking imposed upon them by the terms of the special act, an injunction may be obtained by an owner of property through whose lands the legislature has given the company a right to pass, to restrain the company from taking them (*s*). For, to take any more land, when the whole work can never be performed, is clearly injurious to the owner, and a substantial breach of the condition on which the legislature granted the right to do it. So, it has been said, that if the termini be changed, and, instead of proceeding to some great town or city, the railway were to terminate in some obscure village, the same result would follow (*t*). But to induce a Court of Equity thus to interfere, it must clearly appear that the parliamentary plan is finally abandoned (*u*), and that a real and substantial injury would be sustained by the complaining party, or that the work already completed cannot be beneficial to the public or shareholders (*x*).

in carrying its provisions into effect shall be referred to a particular tribunal, it is clear that if an act be done tortiously, the jurisdiction of the superior courts is not taken away. *Rochdale Canal Co. v. King*, 14 Jur. 16; and *semble*, that even if the act be not tortious, the courts have concurrent jurisdiction, by Erle, J., 14 Jur. 19.

(*o*) 5 & 6 Vict. c. 55, s. 6, post, App. 11.

(*p*) 7 & 8 Vict. c. 85, s. 17, post App. 22.

(*q*) *Attorney-General v. Oxford, W. and W. R. Co.*, Weekly Rep. 1853-4, p. 330.

(*r*) *Attorney-General v. Great Northern R. Co.*, 29 L. J. (Ch.) 794.

(*s*) *Agar v. Regent's Canal Co.*, 1 Swanst. 244, n.; *Gray v. Liverpool and Bury R. Co.*, 10 Jur. 364. We have seen (*ante*, 545) when the Court of Queen's Bench will in-

terfere, by mandamus, to compel a railway company to complete a line of railway, or execute other works according to the provisions contained in their special acts. It has been determined in equity, that, if a portion only of an entire undertaking be completed, the omission to complete the work is not a public injury which will authorize an injunction at the suit of the the Attorney-General. *Attorney-General v. Birmingham and Oxford R. Co.*, 3 Macn. & G. 453; 16 Jur. 113.

(*t*) *Lee v. Milner*, 2 Y. & Coll. 611; *Logan v. Earl of Courtown*, 13 Beav. 32.

(*u*) *Lee v. Milner*, *ubi supra*; *Mayor of King's Lynn v. Pemberton*, 1 Swanst. 244.

(*x*) *Hodgson v. Earl Powis*, 12 Beav. 529.

*Where Injunction
is the proper
Remedy to
restrain Railway
Companies
from doing illegal
Acts.*

Salmon v. Randall.

And where commissioners were empowered by act of Parliament to widen and improve streets, it was decided, that a person whose property was required by the commissioners for the purposes of the act was not entitled to restrain them, by injunction, from taking the steps prescribed for obtaining possession of the property, until they should have shown a sufficient fund in hand to satisfy the price which might be awarded, or until they should have shown the means by which they proposed to procure it. This case was decided on the ground that every purchase was a distinct work in itself, and to that extent accomplished the object of the legislature (*y*).

And where a contractor entered into a contract with a railway company for the performance of certain works to be paid for in debentures and shares, but the company afterwards repudiated the contract, and were proceeding to sell the shares, &c., Wood, V. C., refused an injunction to restrain such sale, as he could not compel the contractors to carry out their part of the bargain (*z*).

Many other instances may be mentioned in which injunctions have issued to restrain the proceedings of railway companies (*a*), as to restrain directors from issuing new shares, confided to them for one purpose, for a purpose wholly adverse (*b*); to restrain a company from declaring shares to be forfeited (*c*); from allowing trains to pass a station without stopping (*d*); from expending the funds of the company in promoting a bill in Parliament which had for its object a purpose not authorized by the acts of Parliament relating to the company (*e*); to restrain directors from other misappropriation of the funds and capital of the company (*f*); to restrain an action at law brought to recover calls upon shares (*g*); to restrain a company, whose terminus was within the limits of a ferry, from conveying railway passengers across the river in steam-boats, in contravention of the rights of the owners of the ferry (*h*); to restrain a railway company from charging the plaintiff higher rates for the carriage of goods, than they charged to other persons for the carriage of like goods under similar circumstances (*i*); to restrain a canal company from affixing the corporate seal to a petition to Parliament for an act

(*y*) *Salmon v. Randall*, 3 My. & Cr. 439.

(*z*) *Peto v. Brighton, &c. R. Co.*, 32 L. J. (Ch.) 677.

(*a*) See ante, 57, 62.

(*b*) *Fraser v. Whalley, Gartside v. Same*, 11 L. T. (N. S.) 175.

(*c*) *Preston v. Grand Collier Dock Co.*, 2 Railw. C. 335; 11 Sim. 327.

(*d*) *Lindsay (Earl of) v. Great Northern R. Co.*, 22 L. J. (Ch.) 995.

(*e*) *Munt v. Shrewsbury and Chester R. Co.*, 20 L. J. (Ch.) 169; *Attorney-General v. Andrews*, 19 L. J. (Ch.) 197; 14 Jur. 124.

(*f*) See the cases on this subject, ante, 63, and *Browne v. Monmouth R. Co.*, 13 Beav.

32; *Shrewsbury and Birmingham R. Co. v. L. and N. W. R. Co.*, 22 L. J. (Ch.) 682.

(*g*) *Playfair v. Birmingham, Bristol and Thames Junction R. Co.*, 1 Railw. C. 640. In this case the court acted upon the rule that a party applying for the aid of a Court of Equity against a legal action, to which he states he has no defence at law, must, in order to obtain it, give judgment in the action. See also *Barnard v. Wallis*, 2 Railw. C. 186.

(*h*) *Cory v. Yarmouth and Norwich R. Co.*, 3 Hare, 593; 3 Railw. C. 524.

(*i*) Ante, 499.

to convert a portion of a canal into a railway, and from applying any of the corporate funds to the proposed object (*k*).

*Rules applicable
to the granting of
Injunctions.*

So injunctions may be issued to prevent a nuisance of a public or private nature (*l*). In all cases of this nature, Courts of Equity are guided by the principles already referred to, and will grant or refuse the injunction according to the merits of each particular case.

Courts of Equity have also authority to issue an injunction, not merely to restrain parties from doing acts, but also from entering into contracts pending litigation, that may embarrass the plaintiff in his suit; but the court is guided by a discretion, and will not exercise this jurisdiction where it seems that, on the balance of convenience and inconvenience between interim interference, the balance greatly preponderates in favour of the defendant, and against the plaintiff (*m*).

Although at one time doubts were entertained whether Courts of Equity have authority to interfere by injunction, to prevent an application to Parliament for an act to release the parties applying from the obligation to execute works which they had undertaken to perform, or otherwise to perform their contract, there is now no doubt whatever that those courts have power, if a proper case is made out, to restrain a party from adopting proceedings in Parliament; the ground of such opinion being, that the court acts *in personam*, and does not, as was supposed, interfere with the jurisdiction of another court (*n*). But the court has no authority so to interfere, to deprive a party of the right of applying to Parliament for a special act to supersede the rules of property by which he finds himself bound, whether arising from contract or otherwise. Thus, where a party agreed with a railway company to withdraw his opposition to their bill in Parliament, in consideration of their completing their line of railway in a particular manner, and the company subsequently found themselves unable to carry their contract into execution, and gave notice of their intention to apply to Parliament for an act to authorize them to abandon their scheme, Lord Cottenham dissolved an injunction which had been granted to restrain the company from making this application (*o*).

*Injunction to
restrain applica-
tion to Parlia-
ment.*

(*k*) *Cunliff v. Manchester and Bolton Canal Co.*, 2 R. & My. 480, n.; but see *Ware v. Grand Junction Waterworks Co.*, 2 R. & My. 470.

(*l*) *Attorney-General v. Sheffield Gas Consumer's Co.*, 22 L. J. (Ch.) 811; 3 De G., M. & G. 304; *Broadbent v. Imperial Gas Co.*, 7 De G., M. & G. 436, 461; 7 H. L. C. 600; *Swaine v. Great Northern R. Co.*, 9 Jur. (N. S.) 1196; on appeal, 33 L. J. (Ch.) 399, post, 576, where it was refused on the ground of acquiescence.

(*m*) Per Lord Cranworth, V. C., *Shrews-*

bury and Chester R. Co. v. Shrewsbury and Birmingham R. Co., 20 L. J. (Ch.) 574; 1 Sim. (N. S.) 410.

(*n*) *Stockton and Hartlepool R. Co. v. Leeds and Thirsk R. Co.*, 2 Phill. 666; 12 Jur. 713; *Lancaster and Carlisle R. Co. v. North-Western R. Co.*, 25 L. J. (Ch.) 223; 2 Kay. & J. 293. See also *Astley v. Manchester, Sheffield and Lincolnshire R. Co.*, 2 De G. & J. 453.

(*o*) *Heathcote v. North Staffordshire R. Co.*, 2 Macn. & Gord. 100; 20 L. J. (Ch.) 82; 14 Jur. 73.

*Legal Rights in
Dispute were for-
merly sent to be
decided by a Court
of Law.*

Parliament for a measure affecting the public benefit, *Wood, V. C.*, refused to interfere, although he had no doubt of the jurisdiction (*p*).

Formerly, if when an injunction was applied for it appeared that any legal rights were in dispute between the parties, Courts of Equity ordered the question to be tried in a Court of Law. Lord Cottenham, C., said upon this point:—"The course I have always adopted in cases where the question turns upon a legal right, is to put the parties in a situation to try as quickly as possible that legal right, and to protect the property to be affected until the legal right be ascertained. If there be equitable grounds on which the jurisdiction of this court ought to be withheld, that is a subject matter connected solely with the jurisdiction of this court (*q*)."

And in determining whether there ought to be a proceeding at law before the injunction was granted, or whether directions should be given to proceed at law, as a condition on which the injunction issued, the court had regard to the circumstances of each case. Sometimes the injunction was granted at once; but the party who had obtained it was put on terms of bringing an action to support the right which had appeared so strong to a Court of Equity, that it has acted on it at the time, but still required the corroboration of the decision of a Court of Law (*r*); and sometimes, from the great inconvenience, and at other times from the extreme doubt, the court considered it best that the injunction should be suspended until the right at law be determined (*s*). In *Earl of Ripon v. Hobart* (*t*), Lord Brougham, C., thus summed up the rule applicable to such cases (*u*):—"If the thing sought to be prohibited is in itself a nuisance, the court will interfere to stay irreparable mischief, without waiting for the result of a trial; and will, according to the circumstances, direct an issue or allow an action, and, if need be, expedite the proceedings, the injunction being in the meantime continued" (*x*). But where the thing sought to be restrained was not unavoidably and in itself noxious, but only something which might, according to circumstances, prove so, the court would refuse to interfere until the matter had been tried at law, generally by an action, though in particular cases an issue was directed for the satisfaction of the court, where an action could not be framed so as to meet the question (*y*).

(*p*) *Lancaster and Carlisle R. Co. v. North Western R. Co.*, ubi supra.

(*q*) *Kemp v. London and Brighton R. Co.*, 1 Railw. C. 504; *Semple v. London and Birmingham R. Co.*, 1 Railw. C. 120; *Dakin v. L. and N. W. R. Co.*, 3 De G. & S. 414; 13 Jur. 579.

(*r*) *Bell v. Hull and Selby R. Co.*, 1 Railw. C. 616; *Clarence R. Co. v. Great North of England R. Co.*, 2 Railw. C. 763.

(*s*) *Gordon v. Cheltenham and Great Western R. Co.*, 2 Railw. C. 872.

(*t*) 3 My. & K. 169.

(*u*) See also *Attorney-General v. Manchester and Leeds R. Co.*, 1 Railw. C. 444.

(*x*) See also *Dawson v. Paver*, 4 Railw. C. 81; *Farrow v. Vansittart*, 1 Railw. C. 602.

(*y*) The finding of an arbitrator, to whom the case is referred, is equivalent to the verdict of a jury. *Imperial Gaslight and Coke Co. v. Broadbent*, 29 L. J. (Ch.) 377.

But the practice as to sending cases for the determination of a Court of Law was materially altered by 15 & 16 Vict. c. 86, which enacts,—

*Legal Rights in
Dispute now
decided in Equity.*

“Sect. 61. That it shall not be lawful for the Court of Chancery, in any cause or matter, to direct a case to be stated for the opinion of any Court of Common Law, but the said Court of Chancery shall have full power to determine any questions of law, which in the judgment of the Court of Chancery shall be necessary to be decided previously to the decision of the equitable question at issue between the parties.

15 & 16 Vict.
c. 86, ss. 61, 62.

“Sect. 62. In cases where, according to the present practice of the Court of Chancery, such court declines to grant equitable relief until the legal title or right of the party or parties seeking such relief shall have been established in a proceeding at law, the said court may itself determine such title or right, without requiring the parties to proceed at law to establish the same.”

Since this act, the practice has been, in cases of difficulty and importance, for the Court of Chancery to avail itself of the assistance of one of the common law judges, under the powers conferred for that purpose by 14 & 15 Vict. c. 83, s. 8. It was, however, frequently decided, that the court would still, in a proper case, give leave to a party to bring an action at law, notwithstanding 15 & 16 Vict. c. 86, ss. 61 and 62 (*z*). But since “The Chancery Regulation Act, 1862” (*a*), it has been held by the Lords Justices (*b*) to be obligatory on the Court of Chancery to decide all questions of law or fact, on the determination of which the plaintiff’s title to relief in equity depends, so that the Court of Chancery will not now give leave to parties to bring actions. But that court may still direct issues to try any question of fact to be tried at the assizes, or at the sittings in London or Middlesex (*c*); and the power to call in the assistance of a common law judge is expressly preserved (*d*).

All questions of law or fact, on which plaintiff’s right to relief in equity depends, must now be decided in equity.

Where there are mixed questions of law and fact, the Court of Chancery will itself determine the questions of fact before a jury, and will only direct an issue in exceptional cases, when satisfied that the facts can be more conveniently tried in that way (*e*). Where, however, a difficult mixed question of law and fact arose before the M. R., which he considered could be more conveniently tried by an action and not by an issue, he dismissed the bill without prejudice to an action (*f*).

Mixed questions of law and fact.

In some cases, the court, in consideration of the great inconvenience and delay which will be caused by granting an injunction, will put the parties under terms to obey the order of the court, and make it a part of the order that, if default is made in complying with the order,

Injunction granted on terms.

(*z*) Williams’s New Practice, 294.

(*a*) 25 & 26 Vict. c. 42, post, 575.

(*b*) *Re Hooper*, 32 L. J. (Ch.) 55, reversing a decree of Stuart, V. C., who had given leave to bring an action. See also *Curlewis v. Carter*, 33 L. J. (Ch.) 370.

(*c*) 25 & 26 Vict. c. 42, s. 2.

(*d*) *Id.* s. 5.

(*e*) Per Westbury, C., *Young v. Fernie*, 33 L. J. (Ch.) 192, reversing an order of Stuart, V. C.

(*f*) *Clarkson v. Edge*, 33 L. J. (Ch.) 443. And see *Swaine v. Great Northern R. Co.*, post, 576.

*Injunction
granted on Terms.*

the injunction shall issue (*g*). In such cases, the court will exercise its discretion according to circumstances; and although there may have been an infraction of the law, it will endeavour to do substantial justice to one party without imposing unnecessary hardship upon the other (*h*). Thus, where a right to an injunction depended on a disputed legal question arising on an agreement, whereby a railway company had undertaken to stop every train at a refreshment station, the court will not grant an injunction, while such question continues to be in dispute, if the company undertake to pay such a sum of money as may be assessed as damages for the violation of the covenant, to be ascertained by the court, so as to avoid the possibility of inflicting a wrongful and irreparable loss upon the company by means of an injunction, and yet avoid the difficulty of bringing numerous actions at law (*i*).

(*g*) *Northam Bridge and Road Co. v. London and Southampton R. Co.*, 1 Railw. C. 653; *Spencer v. London and Birmingham R. Co.*, 1 Id. 159; *Jones v. Great Western R. Co.*, 1 Id. 684; *London and Birmingham R. Co. v. Grand Junction Canal Co.*, 1 Railw. C. 224, ante, 394; *Attorney-General v. Eastern Counties R. Co.*, 3 Railw. C. 337; ante, 425.

(*h*) By agreement between plaintiffs and the agent of a railway company, the former agreed to sell to the company a certain portion of a field for 229*l.*, being 120*l.* for the land, and 109*l.* for compensation for damage by severance to the remaining portion. The agreement contained a stipulation that, in case additional land should be wanted by the company, the same should be taken and paid for after the same rate per acre. The company subsequently took possession of a second portion of the field for purposes authorized by their act, and entered without having previously paid the purchase-money for that second portion after the rate specified in the agreement, and without having previously agreed upon, or ascertained by reference to a jury, the damage occasioned by the severance of the second portion from the remaining portion of the field. A bill having been filed for an injunction, it was decided by Lord Lyndhurst, C., that the agreement only provided for the amount to be paid to the plaintiffs for the value of the second portion of the field, and that neither by intention nor legal construction did such value include the amount of damage by severance to the remaining portion of the field, which amount was either to be agreed upon by the parties, or ascertained by a jury; and that, until such amount was agreed upon or ascertained, the company were not entitled to enter upon the second portion. But upon the company undertaking to pay the amount of damage caused by severance, and to take proper

proceedings, if necessary, for ascertaining the amount of such damage, the injunction was withheld. *Jones v. Great Western R. Co.*, 1 Railw. C. 684. In another case, where, before the amount to be paid by a railway company for land required by them for the purposes of their railway had been determined, a verbal consent, by one party stated to be qualified, by the other alleged to be general, was given, whereupon the railway company entered upon the land, and commenced works which would permanently affect it; it was decided, by Wigram, V.C., that the court would not interfere by injunction to stop the works, if perfect justice could be done by compelling the company to pay for the land; but would order the proximate value to be deposited until the amount should be determined. *Langford v. Brighton and Hastings R. Co.*, 4 Railw. C. 69; see also *Shrewsbury and Birmingham R. Co. v. L. and N. W. R. Co.*, 20 L. J. (Ch.) 90; *Furness R. Co. v. Smith*, 1 De G. & S. 299. And in some cases, where the title of the company is attacked after they have entered upon lands, equity will restrain the claimant from bringing an ejectment, and will order a reference to the Master. *Norfolk R. Co. v. Bayes*, 13 Jur. 435. And where a notice to treat has been given to a person whom the company believed to be the owner of land, and they have subsequently treated with him and purchased the land, and entered upon it, equity will not interfere, by injunction, at the instance of a third person, who sets up a mere dry question of adverse title. *Webster v. South Eastern R. Co.*, 6 Railw. C. 698; 20 L. J. (Ch.) 194; 1 Sim. (N. S.) 172; 15 Jur. 73. In such a case the claimant must bring an action of trespass or ejectment to try the title.

(*i*) *Rigby v. Great Western R. Co.*, 1 Cooper's Cases, temp. Cottenham, C., 6; 10 Jur. 561; 15 L. J. (Ch.) 266.

So, where an injunction is applied for to prevent the use of things devoted to the public use, the court will consider the amount of inconvenience likely to result if the injunction is granted, and will sometimes allow a partial and restricted use of the thing complained of whilst further proceedings are pending (*k*). In all cases of this description, particularly where the equity depends upon a legal right, the court regards both sides of the question, and looks to see, according as the decision shall be for one side or the other, which way the least loss would fall upon either party (*l*). In accordance with this rule, where it appeared that a company had cut through a road to form a bridge across it, without having first provided another sufficient temporary road, which the special act required them to do, and an injunction was granted after the mischief was done, restraining the company from destroying the road, Lord Cottenham, C., being satisfied that the road would be restored as speedily by allowing the company to proceed with the works, as by requiring them to restore the road, suspended the injunction for three weeks (*m*).

When the amount of Inconvenience arising from an Injunction will be considered.

And the same learned judge observed in another case:—

Bell v. Hull and Selby R. Co.

“It is very necessary that this court should deal very strictly with companies, and prevent them, with the large powers that are given to them by acts of Parliament, from defeating the rights and interests of individuals. But it is also the duty of the court to take care that, if individuals avail themselves of any omission of any power on the part of the company, this court should not assist those individuals in extorting money from the company. It is the duty of the court in every case to steer clear of those two opposite extremes; and if there should be some omission which may give a party a legal right against a company, the court would leave that individual to his legal means of taking advantage of it (*n*).”

And in a later case, where an application made for an injunction to restrain defendants from using a communication carried by certain branch rails from plaintiffs' to defendants' railway, Wigram, V. C., said,—

North Union R. Co. v. Bolton and Preston R. Co.

“The question I have to consider is, whether I should grant the injunction prayed before a trial at law. Now upon that question, adverting to the great reluctance which this court has always shown to grant injunctions against trespasses in the nature of nuisances affecting private rights until the legal right had been established by trial at law (amounting, it has in some cases been said, to a positive rule not to grant the injunction before trial), I am clear that the course of the court, in cases like the present, entitles the defendants to call upon me, without forming a decided opinion upon the law of the case, not to decide against them in the present stage of the inquiry. In coming to this conclusion, I am of course governed in some degree by the nature of the injury complained of, as not being irreparable in the

(*k*) *Gordon v. Cheltenham and Great Western Union R. Co.*, 2 Railw. C. 812.

(*l*) See *Attorney-General v. Mayor of Liverpool*, 1 M. & C. 208; *Hilton v. Lord Granville*, Cr. & Ph. 297; *Cory v. Yarmouth and Norwich R. Co.*, 3 Hare, 593; *Furness*

R. Co. v. Smith, 1 De G. & S. 299.

(*m*) *Spencer v. London and Birmingham R. Co.*, 1 Railw. C. 159.

(*n*) *Bell v. Hull and Selby R. Co.*, 1 Railw. C. 636.

When the amount of Inconvenience arising from an Injunction will be considered.

sense of waste or destruction; and I must, therefore, be distinctly understood as not repudiating my right to grant an injunction at any moment, if the defendants, from carelessness, wilfulness or otherwise, should so exercise the privilege they claim as seriously to obstruct the plaintiffs in the use of their own railway (o)."

Deere v. Guest.

And Lord Cottenham, C., refused to grant an injunction to prevent the owners of a railroad made over plaintiffs' land from using it or from interrupting plaintiffs' workmen in removing it, although the possession of the land for the purpose of constructing the railroad had been obtained by means of circumvention and fraud. His lordship intimated, that if defendants were not entitled to the right of way they were mere trespassers, and plaintiffs had their proper legal remedy against them (p). And if a doubt is raised as to the legality of an agreement, or if it be not one of a class in which specific performance is usually decreed, an injunction will not be granted (q).

Application must be made promptly.

It is to be observed that a party who seeks relief by injunction must apply to the court promptly. If he allows the works complained of to proceed, whereby large sums of money are expended, a subsequent application for an injunction will be refused on the ground of acquiescence (r). Thus where a party allowed a railway company to make an excavation to form a new channel for a river, which occupied a considerable period of time and involved a large expenditure of money, the court refused an injunction, although it was applied for as soon as the company ceased to work on their own lands and began to cut the banks of the river (s). Again, where the plaintiff whose house adjoined a railway station allowed the company to make a siding, on which they collected manure, and this went on for four years and a half without the plaintiff taking any steps to stop it; Wood, V. C., refused an injunction on the ground of acquiescence, and his decision was upheld by the Lords Justices (t). Where, however, the proprietors of a turnpike-road stood by while a railway company laid down temporary rails across their road, and employed wagons drawn by horses only on the temporary railroad for the pur-

(o) *North Union R. Co. v. Bolton and Preston R. Co.*, 3 Railw. C. 345.

(p) *Deere v. Guest*, 1 My. & Cr. 516; see also *Warburton v. London and Blackwall R. Co.*, 1 Railw. C. 558; *Attorney-General v. United Kingdom Electric Telegraph Co.*, 31 L. J. (Ch.) 329; *Perks v. Wycombe R. Co.*, 3 Giff. 662.

(q) *Johnson v. Shrewsbury and Birmingham R. Co.*, 22 L. J. (Ch.) 921; and see *Foster v. Birmingham and Dudley R. Co.*, Weekly Rep. 1853-4, p. 378.

(r) *Illingworth v. Manchester and Leeds R. Co.*, 2 Railw. C. 187; *Semple v. London and Birmingham R. Co.*, 1 Railw. C. 120; *Greenhalgh v. Manchester and Birmingham R. Co.*, 1 Railw. C. 68; 3 My. & Cr. 784; *Birmingham Canal Co. v. Lloyd*, 18 Ves.

515; *Attorney-General v. Manchester and Leeds R. Co.*, 1 Railw. C. 436; *Barker v. North Staffordshire R. Co.*, 2 De G. & Sm. 55, 72; *Ware v. Regent's Canal Co.*, 3 De G. & J. 212. But if a party believes a mere temporary violation of his right to be threatened, he is not precluded from relief; see *Gordon v. Cheltenham and Great Western Union R. Co.*, 2 Railw. C. 800; *Lancaster and Carlisle R. Co. v. North Western R. Co.*, 25 L. J. (Ch.) 223.

(s) *Illingworth v. Manchester and Leeds R. Co.*, 2 Railw. C. 187; and see *Great Northern R. Co. v. Lancashire and Yorkshire R. Co.*, 1 Sm. & Giff. 81.

(t) *Swaine v. Great Northern R. Co.*, 9 Jur. (N. S.) 1196; S. C. on app., 33 L. J. (Ch.) 399.

pose of carrying on the works, that is not such laches as will deprive the turnpike trustees of any right they have to an injunction to restrain the railroad company from using the railroad for public traffic with locomotive engines (*u*).

Application must be made promptly.

With regard to what constitutes that amount of laches which will deprive a party of his right to relief by injunction, it is difficult to state any positive rule. To a very considerable extent each case will be governed by its own particular circumstances (*v*), and it has been said on this subject, that there are two arguments invariably adduced by public companies (*w*):—if the plaintiff comes to the court complaining of an injury at the first commencement, it is said that the damage is trifling and the motion frivolous and vexatious; if he waits until it has assumed a grave shape, it is then said that he has acquiesced, and is therefore precluded from complaining.

When an injunction is applied for, all the facts of the case should be fairly stated; if they are not, and the injunction is afterwards dissolved in consequence of the false representation of the case, the rule is, that the plaintiff will be subjected to pay the whole of the defendant's costs (*x*). Forgetfulness is no excuse (*y*). And if a party comes for an *ex parte* injunction, and misrepresents the facts of the case, he is not permitted to support the injunction by showing another state of circumstances in which he would be entitled to it (*z*). Upon this point, it has been said that the jurisdiction of the court in granting *ex parte* injunctions is a very hazardous one, and one which, though often used, to preserve property, may be often used to the injury of others; and it is right that a strict hand should be held over those who come with such applications (*a*).

All facts must be stated.

It is no objection to an injunction that it is mandatory in its effects, although only prohibitory in form (*b*). Thus in *Great North of England, Clarence and Hartlepool Junction R. Co. v. Clarence R. Co.* (*c*), the principal question between the parties was, upon the construction of the plaintiffs' special act, whether, assuming that plaintiffs had a right to make a bridge pursuant to a certain plan over defendants' railway, no part of the permanent supports of such bridge being intended to rest upon defendants' land, the plaintiffs had a right, by way of temporary easement, to erect poles and other tem-

Injunctions may be mandatory in their effect.

(*u*) *Northam Bridge and Road Co. v. London and Southampton R. Co.*, 1 Railw. C. 653; 9 L. J. (Ch.) 277.

(*v*) *Drewry on Injunctions*, 293; and see *Great Western R. Co. v. Oxford and Wolverhampton R. Co.*, 3 De G., M. & G. 341; *Ffooks v. South Western R. Co.*, 1 Sm. & Giff. 142.

(*w*) *Innocent v. North Midland Canal Co.*, 1 Railw. C. 250, *arguendo*.

(*x*) *Illingworth v. Manchester and Leeds*

R. Co., 2 Railw. C. 187; *Semple v. London and Birmingham R. Co.*, 1 Railw. C. 493.

(*y*) *Clifton v. Robinson*, 16 Beav. 355.

(*z*) *Greenhalgh v. Manchester and Birmingham R. Co.*, 1 Railw. C. 118.

(*a*) *Attorney-General v. Mayor of Liverpool*, 1 My. & Cr. 210.

(*b*) Injunction granted on motion must be the same as that prayed for by the bill. *Burdett v. Hay*, 33 L. J. (Ch.) 41.

(*c*) 1 Coll. 507; see also 10 Jur. 278.

*Mandatory
Injunctions.*

porary constructions upon land adjacent to defendants' railway, and to pass and re-pass across such railway, doing no vexatious acts, compensating for all damage, and not interfering with the regular traffic of defendants' railway. The defendants, in order to prevent plaintiffs from so temporarily using their land, had built up a wall, which effectually prevented plaintiffs from carrying on their works; and the bill prayed an injunction to restrain defendants from continuing to maintain such wall, and from preventing plaintiffs from making their bridge, &c. The court refused to grant the injunction until satisfied by the opinion of a court of law that plaintiffs had a legal right to build the bridge, and to use defendants' land by way of temporary easement. But the Court of Exchequer having certified that the plaintiffs had both such legal rights, the Lord Chancellor (supporting the view of Knight Bruce, V. C., that it was no objection to the injunction that it was in effect of a mandatory character) made the order nearly in the terms of the prayer of the bill. To the same effect is *Lord Mexborough v. Bower* (*d*), in which an injunction was granted to restrain defendant, who had cut certain channels from one coal field into another (in derogation of an agreement with plaintiff), from permitting the communication to continue open (*e*).

*Isenberg v. East
India House
Estate Co.*

The jurisdiction of Courts of Equity to interfere by way of mandatory injunction is thus explained by Lord Westbury, C., in a recent case (*f*), in which plaintiff sought for a mandatory injunction restraining defendants from permitting certain new buildings which they had erected to remain and obstruct the plaintiff's ancient lights. After adverting to the jurisdiction of the court to interfere by way of prohibition of further damage or intended damage, his Lordship said :—

“ But there has been superadded to that the power of the court to grant what has been denominated ‘a mandatory injunction,’ that is, an order compelling a defendant to restore things to the condition in which they were at the time when the plaintiff's complaint was made. The exercise of that power is one that must be attended with the greatest possible caution. I think, without intending to lay down any rule, that it is confined to cases where the injury done to the plaintiff cannot be estimated and sufficiently compensated by a pecuniary sum. Where it admits of being so estimated, and where the evil sustained by the plaintiff may be abundantly compensated in money, there appears to be no necessity to superadd to the case the exercise of that extraordinary power by this court. I can easily understand cases in which an ancient mansion or family seat may be prejudicially affected, and where the remedy therefore can hardly be other than that of restoring things to their former condition. I can imagine the interruption of a supply of water that

(*d*) 7 Beav. 127. See also *Hervey v. Smith*, 1 Kay & J. 389.

(*e*) Lord Cottenham, C., points out that injunctions should be so drawn up as to declare the rights of the parties, and not in a vague manner prohibit the company from

doing what they have no authority to do; see *Cotter v. Midland R. Co.*, 5 Railw. C. 192; 2 Phil. 469.

(*f*) *Isenberg v. East India House Estate Co.*, 33 L. J. (Ch.) 392.

would entirely stop a flourishing manufactory, where it is impossible to estimate the future profits of the trade, or it would be difficult to define now a sum of money that may be sufficient compensation for all injury hereafter. But that is not the case that is before me. I have got a case in which I think it is a matter of very doubtful result whether any damage has been sustained, but it is a case in which, beyond all question, without taking into consideration the confession of the parties, the whole of the injury that has been sustained by the plaintiff, the whole of the prejudice and damage to the plaintiff's premises by the erection of the defendants' buildings, may be abundantly compensated in money. To what end, then, am I to exercise a jurisdiction which, in such a case as this, would be simply mischievous to the defendants, without being attended with correspondent benefit to the plaintiff, unless, indeed, I could approve of the plaintiff's taking advantage of the mischief and loss that the defendants would have to sustain, in order to aggravate and exaggerate his claim for pecuniary compensation? This is a case in which the benefit of the recent statute (*g*), giving power to this court to assess and ascertain damages, is peculiarly felt, and I hold it therefore to be the duty of the court, in such a case as the present, not to deliver over the defendants to the plaintiff bound hand and foot, in order to be made subject to any extortionate demand that the plaintiff might by possibility make, but in which it is the duty of the court instead of granting a mandatory injunction to substitute an inquiry before itself, in order to ascertain the measure of damage that has been actually sustained. I shall not forget the fact, which has been properly pressed upon me, that the defendants, after having notice of the plaintiff's complaint, carried on their works. I cannot however rest upon that at all judicially. They had the power of doing so. But it may be taken as a confession on the part of the defendants that what they were doing would certainly be attended with some injury to the plaintiff. That, I think, is not to be lost sight of in the estimation of that injury; but the course which I shall take is the one that I think is clearly consistent with justice and with reason, and really will carry into effect what both sides admit ought to be done, though they have been so unfortunate as not to agree upon the means of doing it. I shall suspend the whole of this order, and direct an inquiry to be had before me, for the purpose of ascertaining what damage has been sustained by the plaintiff by reason of the buildings erected by the defendants, and what will be a sufficient compensation to be paid by the defendants to the plaintiff as a satisfaction for such damage, including therein the power to direct any works to be done by the defendants for the benefit of the plaintiff as part of the compensation to be so made to him. The parties respectively to be at liberty to have their witnesses examined *vivâ voce* before me, if they prefer that course to affidavits, that is, both may be combined. If the affidavits are filed and the cross-examination of the witnesses be desired, that cross-examination shall be had before me in court."

*Mandatory
Injunctions.*

*Isenberg v. East
India House
Estate Co.*

Lastly, it is to be observed, that the jurisdiction of equity to restrain a railway company from so dealing in the course of its operations as to injure the property of another, is not taken away because it happens that the act incorporating the company points out, specifically, a mode in which a party complaining of its acts may obtain compensation (*h*).

A breach of an injunction being a contempt of court, the guilty

*Remedies for a
breach of an
injunction.*

(*g*) Referring to 21 & 22 Vict. c. 27, post, 574.

(*h*) *Coates v. Clarence R. Co.*, 1 R. & M. 181; *Drewry on Injunctions*, 225.

party is liable to be committed to prison for the contempt; and, if an injunction be disobeyed by a railway company, a sequestration will in some cases be also issued (*i*).

Power to Court of Chancery to award damages.

By the Court of Chancery Amendment Act, 1858, it is enacted that (*j*):—

“In all cases in which the Court of Chancery has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any covenant, contract or agreement, it shall be lawful for the same court, if it shall think fit, to award damages (*h*) to the party injured, either in addition to or in substitution for such injunction or specific performance, and such damages may be assessed in such manner as the court shall direct (*l*).

Damages may be assessed, or question of fact arising in any suit, may be tried by a jury before the court itself.

“Sect. 3. It shall be lawful for the Court of Chancery, if it shall think fit, to cause the amount of such damages in any case to be assessed, or any question of fact (*m*) arising in any suit or proceeding to be tried, by a special or common jury before the court itself; and the Court of Chancery may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for such assessment of damages or the trial of such question of fact, as may be made by any of the superior courts of common law at Westminster, and may also make any other orders which to the Court of Chancery may seem requisite (*n*); and every such jury shall consist of persons possessing the qualifications, and shall be struck, summoned, balloted for and called in like manner as if such jury were a jury for the trial of any cause in any of the said superior courts, and every jurymen so summoned shall be entitled to the same rights and subject to the same duties and liabilities as if he had been duly summoned for the trial of any such cause in any of the said superior courts; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause; and generally for all purposes of or auxiliary to the assessment of damages on the trial of questions of fact by a jury before the court itself, and in respect of new trials, the Court of Chancery shall have the same jurisdiction, powers and authority in all respects as belong to any superior court of common law or to any judge thereof for the like purposes; provided that from any order made by the court on an application made for a new trial, there shall be the same right of appeal as from any other order of the court.

Questions to be reduced to writing.

“Sect. 4. Any question of fact and any question as to the amount of damages which shall be so ordered to be tried by a jury before the court itself shall be reduced

(*i*) *Attorney-General v. Great Northern R. Co.*, 4 De G. & S. 75; ante, 406. If in the construction of the railway works a public nuisance be created, the company are liable to be indicted, whether the nuisance be caused by non-feasance or mis-feasance; see *R. v. Great North of England R. Co.*, 9 Q. B. 315, where a company were held to be liable to indictment for obstructing a highway. Tram-roads on a turnpike-road passing over the lands of the owner of the tram-road, were held to be such an obstruction as to amount to a nuisance. *R. v. Charlesworth*, 5 Cox, C. C. 174. See also *R. v. Train*, 31 L. J. (M. C.) 169; 2 Best & S. 640. So contractors employed by the company may be indicted for causing a public nuisance, by crossing a public road with an insufficient bridge. *R. v. Rigby*, 14 Jur. 329; ante, 398; *R. v. Scott*, 3 Q. B. 543; ante, 404; but see *Watkins v. Great Northern R. Co.*, 20 L. J. (Q. B.) 391; 16 Q. B. 961.

(*j*) 21 & 22 Vict. c. 27, s. 2. This act is sometimes called Sir Hugh Cairns's Act. See *Beardmore v. Tredwell*, 31 L. J. (Ch.) 892. Sect. 2 and the following sections to

sect. 7, inclusive, extend to Ireland (sect. 8), and the County Palatine of Lancaster (sect. 10).

(*k*) Questions of compensation for damages, under this act, can be entertained only in suits in which the court has undoubted jurisdiction. *Rogers v. Challis*, 29 L. J. (Ch.) 241. Damages cannot be given independent of relief. *Chinnock v. Sainsbury*, 30 L. J. (Ch.) 409. But see *Swaine v. Great Northern R. Co.*, post, 576. Parties claiming damages must establish the facts on which their claim is based, by evidence. *Mold v. Wheatcroft*, 30 L. J. (Ch.) 598. Plaintiff, though barred by acquiescence or otherwise from his remedy by injunction, may nevertheless obtain damages, and that although no action would be maintainable at law. *Eastwood v. Lever*, 33 L. J. (Ch.) 355. Damages may be awarded, though not specifically prayed. *Catton v. Wild*, 32 Beav. 266.

(*l*) See *Wedmore v. Mayor of Bristol*, coram Stuart, V. C., 11 Weekly Rep. 136.

(*m*) See ante, 567.

(*n*) Consol. Ord. 1860, XLI. IV. and Schedule (N).

into writing in such form as the court shall direct, and at the trial the jury shall be sworn to try the said question and true verdict to give thereon according to the evidence; and upon every such trial the Court of Chancery shall have the same powers, jurisdiction and authority as belong to any judge of any of the said superior courts sitting at Nisi Prius.

21 & 22 Vict.
c. 27.

"Sect. 5. It shall also be lawful for the Court of Chancery, if it shall think fit, to cause the amount of such damages in any case to be assessed, or any question of fact arising in any suit or proceeding to be tried, before the court itself without a jury, and to cause the evidence on the trial of that question to be taken by the oral examination of witnesses and other proofs in open court, and any question of fact and any question as to the amount of damages which shall be so ordered to be tried before the court itself shall be reduced into writing in such form as the court shall direct, and the verdict of the judge shall be of the same effect as the verdict of a jury under this act; and the proceedings upon and after such trial as to the power of the court, the evidence and otherwise, shall be the same as in the case of trial by jury under this act: provided that, in the case of a trial under this section, any person may apply for a new trial, either to the judge before whom the trial was had or to the Court of Appeal in Chancery.

Damages may be assessed, or questions of fact tried before the court itself, without a jury.

"Sect. 6. It shall also be lawful for the Court of Chancery, in any case in which it shall think fit so to do, to cause the amount of such damages to be assessed by a jury before any judge of one of the superior courts of common law at nisi prius, or at the assizes, or before the sheriff of any county or city, and for that purpose to issue a precept to the sheriff of such county or city as the Court of Chancery shall think fit, or where the sheriff is interested then to the coroner, requiring him to return, summon and impanel a common or special jury for the purpose aforesaid, in like manner as is done in cases of writs of inquiry at common law which are to be executed before a judge or before the sheriff; and the Court of Chancery shall have power to set aside the verdict or inquisition on such inquiry, and to direct a new inquiry in such manner and on such terms as the court shall think fit.

Damages may be assessed by jury before judge of superior courts of common law at Nisi Prius, or before a sheriff.

"Sect. 7. In any case in which all parties to a suit are competent to make admissions, any party may call on any other party by notice to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, the cost of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless the court shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is in the opinion of the taxing master a saving of expense."

One party may call on another to admit documents.

By the Chancery Regulation Act, 1862 (n), it is enacted, that--

25 & 26 Vict.
c. 42.

"In all cases in which any relief or remedy within the jurisdiction of the Court of Chancery is or shall be sought in any cause or matter instituted or pending in either of the said courts, and whether the title to such relief or remedy be or be not incident to or dependent upon a legal right, *every question of law or fact* cognizable in a court of common law, on the determination of which the title to such relief or remedy depends, *shall be determined by or before the same court.*

Court shall determine every question of law and fact incident to the relief sought.

"Sect. 2. *Provided always*, that whenever it shall appear to either of such courts that any question of fact may be more conveniently tried by a jury at the assizes, or at any sitting in London or Middlesex for the trial of issues in the superior courts of common law, it shall be lawful for such court, notwithstanding anything in this act contained, to direct an issue to try any question of fact at the assizes to be held in and for any county where the same may be conveniently tried, or at any such sitting for the trial of issues in London or Middlesex as aforesaid, and (subject to such general orders, if any, as may hereafter be made in relation thereto) the practice hitherto existing in such court in reference to the trial of issues shall prevail in reference to the trial of any issues directed under this proviso.

Where questions of fact may be more conveniently tried at assizes, issues may be directed.

"Sect. 3. All the provisions with reference to the trial of questions of fact by or before the High Court of Chancery, and by or before the Court of Chancery of the said county palatine, which are contained in 'The Chancery Amendment Act, 1858,' shall apply to the determination of questions of fact by or before the said courts respectively under this act.

Provisions of 21 & 22 Vict. c. 27, to apply to this Act.

"Sect. 4. *Provided also*, that in all cases in which the object of any suit in equity shall be to recover or defend the possession of land under a legal title or under a title

Proviso in cases where object of suit to recover or

(n) 25 & 26 Vict. c. 42 (sometimes called Rolt's Act). See ante, 567.

25 & 26 Vict.
c. 42.

defend possession
of land under a
legal title.

which would have been legal but for the existence of some outstanding term, lease or mortgage (and whether mesne profits or damages shall or shall not also be sought in such suit), such relief only shall be given in equity as would have been proper according to the rules and practice of the court if this act had not passed; and nothing in this act shall make it necessary for a court of equity to grant relief in any suit concerning any matter as to which a court of common law has concurrent jurisdiction, if it shall appear to the court that such matter has been improperly brought into equity, and that the same ought to have been left to the sole determination of a court of common law."

Courts of Chan-
cery not bound to
inquire as to
damages.

It has been held that the Court of Chancery, though refusing an injunction, *may*, under Sir H. Cairns's Act, direct an inquiry as to damages, but is *not bound* to do so by Rolt's Act; and, if it thinks that the case will be more effectually disposed of at law, will dismiss the plaintiff's bill without prejudice to his right to bring an action (*n*).

II. *Injunctions at Law.*

Injunctions at
Common Law.

We shall now proceed to show when writs of injunction may be obtained at common law. We have already considered the extent of the jurisdiction which has been conferred by the Railway and Canal Traffic Act, 1854 (*o*). Additional powers granted by the Common Law Procedure Act, 1854, which authorize the Superior Courts of Common Law, or a judge, to issue injunctions in certain other cases, appear to be extremely well calculated to remedy an intolerable mischief. Formerly, if a legal right had been infringed, and an action was brought to recover damages, it was not an unusual course for a defendant to harass the plaintiff by stoutly contesting the proceedings at law, whilst he continued to repeat or continued the trespasses complained of, thereby merely affording the plaintiff a new ground for the maintenance of another action at law; and thus the plaintiff was driven to a Court of Equity for relief, or he was compelled to bring a new action, as often as each trespass was repeated. It will be seen that a complete check is now offered to such proceedings; and it is worthy of remark, that the steps now taken point towards the accomplishment of a more complete blending of the jurisdiction of the superior courts, for the remedy in the courts of law has hitherto, with rare exceptions, been compensatory, and not preventive,—merely awarding redress for wrongs when actually committed, but not prohibiting their commission. On the other hand, as we have seen, courts of equity are also now empowered in certain cases to decide questions of law and give damages (*p*).

(*n*) *Swaine v. Great Northern R. Co.*, 9 Jur. (N. S.) 1196; 33 L. J. (Ch.) 399; following *Johnson v. Wyatt*, Id. 394. See also *Isenberg v. East India House Estate Co.*, Id. 392; and ante, 572.
(*o*) Ante, 456.
(*p*) Ante, 574.

The Common Law Procedure Act, 1854, enacts:—

"Sect. 79. In all cases of breach of contract or other injury, where the party injured is entitled to maintain, and has brought, an action, he may, in like case and manner as hereinbefore provided with respect to mandamus (*q*), claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right; and he may also in the same action include a claim for damages or other redress.

"Sect. 80. The writ of summons in such action shall be in the same form as the writ of summons in any personal action, but on every such writ and copy thereof there shall be endorsed a notice that in default of appearance the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain a writ of injunction.

"Sect. 81. The proceedings in such action shall be the same, as nearly as may be, and subject to the like control, as the proceedings in an action to obtain a mandamus under the provisions hereinbefore contained (*q*); and in such action judgment may be given that the writ of injunction do or do not issue, as justice may require; and in case of disobedience such writ of injunction may be enforced by attachment by the court, or, when such court shall not be sitting, by a judge.

"Sect. 82. It shall be lawful for the plaintiff at any time after the commencement of the action, and whether before or after judgment, to apply *ex parte* to the court or a judge, for a writ of injunction (*r*) to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right; and such writ may be granted or denied by the court or judge, upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as to such court or judge shall seem reasonable and just; and in case of disobedience such writ may be enforced by attachment by the court, or, when such court shall not be sitting, by a judge: provided always, that any order for a writ of injunction made by a judge, or any writ issued by virtue thereof, may be discharged, or varied or set aside by the court, on application made thereto, by any party dissatisfied with such order (*s*)."

Under the Common Law Procedure Act, 1854.

17 & 18 Vict. c. 125.

Form of writ of summons and endorsement thereon.

Form of proceedings and of judgment.

Writ of injunction may be applied for at any stage of the cause.

It has not yet been decided how far these provisions of the Common Law Procedure Act interfere with the previously existing jurisdiction in equity, which was limited to cases in which a court of law could give no sufficient relief (*t*).

How far jurisdiction of courts of equity interfered with.

The granting an injunction under the above sections is, however, not a matter of right in the plaintiff, but of discretion in the court, who will take all the circumstances of the case into consideration (*u*). And the court will not grant an injunction in favour of one who sues for a penalty or liquidated damages (*x*); though they will sometimes grant one in favour of a plaintiff who claims unliquidated damages (*y*). However, where a declaration claiming an injunction (in an action by a reversioner against a railway company for injury done to some houses in the course of the defendants' works) did not disclose

Granting injunction discretionary.

Demurrer to claim of injunction not allowed.

(*q*) Ante, 557. And see forms, 14 C. B. 793; 4 E. & B. 385.

(*r*) The court will grant a rule to show cause only in the first instance. *Gittens v. Symes*, 15 C. B. 362. An injunction once granted continues in force until it is got rid of by the defendant. *Delarue v. Fortescue*, 26 Law J. (Exch.) 339; 2 H. & N. 324.

(*s*) And see as to costs, 23 & 24 Vict.

c. 126, s. 32, ante, 559.

(*t*) See *Swaine v. Great Northern R. Co.*, 33 L. J. (Ch.) 399.

(*u*) *Jessel v. Chaplin*, 2 Jur. (N. S.) 931.

(*x*) *Carnes v. Nesbitt*, 30 L. J. (Exch.) 348; 7 H. & N. 158, 778; 31 Law J. (Exch.) 273.

(*y*) *Mayall v. Higbey*, 31 L. J. (Exch.) 328.

Injunction when
refused.

facts showing clearly that there could not be an injunction, the court would not allow the defendants to demur to so much of the declaration as claimed the writ (*z*). And an injunction would of course be refused if by granting it the defendant would be called upon to do an illegal act (*a*).

How enforced
against a cor-
poration.

A writ of injunction against a corporation may be enforced either by attachment against the directors or other officers thereof, as in the case of a mandamus (*b*), or by writ of sequestration against their property and effects, to be issued in such form and tested, and returnable in like manner as writs of execution, and to be proceeded upon and executed in like manner as writs of sequestration issuing out of the Court of Chancery (*c*).

(*z*) *Bilke v. London, Chatham and Dover R. Co.*, 33 L. J. (Exch.) 206.

(*a*) *London and South Western R. Co. v. Webb*, 12 Weekly Rep. 51.

(*b*) See 17 & 18 Vict. c. 125, s. 73, ante, 558.

(*c*) 23 & 24 Vict. c. 126, s. 33. And see ante, 574, note (*i*).

PART IV.

ON THE ASSESSMENT OF RAILWAYS TO THE POOR'S-RATE.

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1. It is well known that railway companies are liable to be rated to the relief of the poor; but much difficulty has been hitherto experienced in carrying the law into effect. The intricacy of the numerous questions which arise in considering this important subject, and the present unsettled state of the law, are circumstances which seem to invite an investigation of the general principles which are applicable to the assessment of the poor's-rate.

The principles of law applicable to the rating of railways.

Railway companies are liable to be rated to the poor's-rate, as being occupiers (*a*) of land, within 43 Eliz. c. 2, s. 1, which enacts, that competent sums shall be levied in each parish for the relief of the poor, by "taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods in the parish," to be gathered out of the parish, according to the ability of the parish.

Stat. 43 Eliz. c. 2.

And the Parochial Assessment Act (*b*) enacts, sect. 1:—

Parochial Assessment Act, 6 & 7 Will. 4, c. 96.

"That no rate for the relief of the poor in England and Wales shall be allowed by any justices (*c*), or be of any force, which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto, that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates (*d*), and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses (if any) necessary to maintain them in a state to command such rent: provided always, that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities (if any) according to which different kinds of hereditaments are now by law rateable."

(*a*) See post, 600, note (*m*).

(*b*) See also the Union Assessment Committee Act, 1862, 25 & 26 Vict. c. 103, s. 15; and 27 & 28 Vict. c. 39.

(*c*) The allowance of a rate by justices is a mere ministerial, and not a judicial, act. *R. v. Earl of Yarborough*, 12 A. & E. 416. But a rate without it is void. *Fox v. Davies*, 6 C. B. 11. And in so far as seeing that

it is made by competent authority, the allowance is a judicial act. Per Maule, J., *ibid*.

(*d*) In metropolitan parishes, the general rate and lighting rate, levied under 18 & 19 Vict. c. 120, s. 161, are tenants' rates, and are to be deducted. *R. v. Goodchild*, 27 L. J. (M. C.) 233; E. B. & E. 1; and see *ibid.*, as to tenants' profits.

*The Principles of
Law applicable to
the Rating of
Railways.*

Exemption of
stock-in-trade.

And, by the 3 & 4 Vict. c. 89 (*d*), it is enacted:—

“That it shall not be lawful for the overseers of any parish, township or village, to tax any inhabitant thereof, as such inhabitant, in respect of his ability derived from the profits of stock-in-trade or any other property, for or towards the relief of the poor: provided always, that nothing in this act contained shall in anywise affect the liability of any parson or vicar, or of any occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines or saleable underwoods, to be taxed under the provisions of the said acts, for and towards the relief of the poor.”

Railway rateable
where profits
earned.

These are the statutory provisions now in force. It may also be taken to be a well-established principle, that a railway is rateable in the parish where the profits are *earned*; and it makes no difference that the earnings are received elsewhere; just as a farmer is rateable in the place where he grows his corn, not where he sells it (*e*). It therefore makes no difference that a portion of the fares and tolls which are earned in any parish are received at any other place.

Parochial
principle.

And it is the amount of the traffic over the portion of the railway in each *parish*, taken in connection with the proper deduction, which must regulate the amount of the rate. If the portion in a parish is more productive than other portions in other parishes, either because there is more traffic, or because the yearly outgoings and expenses there are less, it ought to be assessed at a higher proportionate value (*f*): as “the value which the land occupied in each parish produces, after the due allowance, is that upon which the occupier is to be rated in each” (*g*). This is called the parochial principle, in contradistinction to the mileage principle, which incorrectly assumes that the property must be equal throughout the whole line of a railway.

Prime cost
immaterial.

Another principle of the law is, that the amount of the assessment to the rate does *not* depend upon the amount of the *capital originally expended* in constructing the portion of the railway which is the subject of the assessment (*h*); except, indeed, so far as such expenditure has increased the annual value of that portion of the railway; for instance, the tunnel at Box Hill, on the Great Western Railway, or the portion of the L. and N. W. Railway constructed across Chat Moss, must be rated with reference, not to its original cost, but with reference to the amount of its yearly earnings and outgoings, in the same proportion as any other parts of the railway less costly in their construction.

It therefore appears, 1st, that railway companies are liable to be rated as being occupiers of land; 2ndly, that the company must be

(*d*) Continued till 1st October, 1865, and thence to the end of the next session of Parliament, 26 & 27 Vict. c. 95, and see post, 584, note (*n*).

(*e*) *R. v. Inhabitants of Barnes*, 1 B. & Ad. 116.

(*f*) *R. v. Inhabitants of Kingswinford*, 7 B. & C. 242; *R. v. London and South West-*

ern R. Co., post, 586, note (*q*).

(*g*) *R. v. London, Brighton and S. C. R. Co.*, 20 L. J. (M. C.) 142, post, 590.

(*h*) *R. v. Mile End Old Town*, 10 Q. B. 208; 16 L. J. (M. C.) 184. And see *R. v. North Staffordshire R. Co.*, 30 Law J. (M. C.) 68.

assessed upon an estimate of the net annual value of the hereditaments, *i. e.* the land on which the railway is constructed; 3rdly, that they are not liable to be assessed in respect of their ability derived from stock-in-trade, or any other property, except land; 4thly, that the rate must be upon the parochial, and not upon the mileage principle; and lastly, that the cost of the railway and works in the particular parish cannot be taken as an estimate on which to found the rate.

*The Principles of
Law applicable to
the Rating of
Railways.*

These principles of law appear to be clear and distinct enough; but in their practical application great difficulties have been experienced. They seem to arise chiefly from the following causes: first, the evident unsuitableness of the Parochial Assessment Act to the rating of railway property; 2ndly, from the extreme difficulty of distinguishing the profits of trade made by a company as carriers, and by the use of engines and other personal property (in respect of which, as we have seen, they are not rateable) from the profitable occupation of the land on which the railway is constructed; and, lastly, from the embarrassment which has been introduced by rating branch railways independently of main or trunk lines, when both are under one management, and thus raising the *vexata quæstio* as to the rateable value of the former, when regarded as a feeder of traffic to the latter.

Some remarks suggest themselves on these points. With respect to the first, we need only refer to the forcible language used by Lord Campbell, C. J. (*i*), and we shall see, at once, how great an obstacle is presented by the incongruous provisions of the Parochial Assessment Act. His Lordship, after expressing an earnest hope that some legislative enactment would relieve the courts from the difficulty of administering the existing law, said:—

Inapplicability of
Parochial Assess-
ment Act to rail-
way rating.

“The rule laid down by the Parochial Assessment Act is easily applicable to the property which the legislature then had in contemplation, but it is wholly inapplicable to a railway extending many miles through many parishes, with a trunk line and branches, the traffic upon its different sections varying materially, and the expense of working these different sections bearing no certain proportion to the earnings upon them. Required to determine how a railway company should be assessed in a parish through which a branch of the railway passes, without any

*R. v. Great
Western R. Co.*

(*i*) In *R. v. Great Western R. Co.*, 15 Q. B. 397. And in *R. v. Coventry Canal Co.*, 28 L. J. (M. C.) 102; E. & E. 572, where it was held that the expense of maintaining locks in a canal is not a local expense, but ought to be thrown on the whole line of canal, the same learned judge said, “There certainly is considerable difficulty in applying the rule laid down in the Parochial Assessment Act to canals and railways passing through many parishes; and we had hoped that the legislature would have relieved us from the difficulty by laying down rules of rating more applicable to a species of property

rapidly increasing in amount, which does not seem to have been in contemplation when the Parochial Assessment Act passed. But the legislature declining to interpose, we have been driven to dispose of all these cases in the best manner we could; and we see no aggravated difficulty in applying to these the only rule given to us, whether the companies are carriers themselves, or receive their profits in the shape of tolls, for using the means of conveyance which they furnish to the public, without furnishing the vehicles to convey, or the moving power.”

*The Principles of
Law applicable to
the Rating of
Railways.*

station within the parish, the traffic on this branch being comparatively small, and large outgoings being required, from the peculiarities of the locality, to keep in repair and to work the portion of the railway within this parish, we are directed to consider the rent at which this section of the railway might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes and tithe commutation rent-charge, and the only guide we have as to deductions, is to deduct the probable annual costs of repairs, insurance, and other expenses, without any intimation as to what we are to do with respect to tunnels or embankments, or standing engines employed exclusively within the parish, or locomotive engines employed on the whole line, or the general expenses of the directors who manage the entire concern, or the charge arising from the maintenance of stations or the employment of police. If we settle all these and similar questions, we may be considered as legislators rather than judges, making rather than expounding the law. At all events we must proceed upon a most improbable and nearly absurd supposition that a person may be found who would take the portion of the railway which passes through a single parish, and no more, as tenant from year to year.

"Without some alteration in or declaration of the law upon this subject by the legislature, we foresee that, although we should give judgment between these parties, much trouble, litigation and expense must still arise both to parishes and to railway companies throughout England."

Necessity of distinguishing between profits of personalty and profits of land.

As to the second difficulty suggested, *i.e.*, that which proceeds from the necessity of distinguishing the profits of trade, and such as arise from personal property, from those which belong to the occupation of land, we may observe that this important investigation rests entirely with the courts of Quarter Sessions, who are the sole judges of the facts in each particular case, and who alone can determine this difficult problem. The Court of Queen's Bench, adhering to old decisions, has resolutely declined to interfere with the findings of the sessions. As we shall see hereafter (*k*), the mode now adopted to ascertain the rateable value of a railway is, first to ascertain the gross receipts of the line within the particular parish, and then by making a series of elaborate calculations, endeavour to exhaust the proper deductions, so as to arrive at a sum which expresses the net rent which a tenant from year to year might be expected to give for the portion of the railway which is situate in the parish raising the rate. This being the state of the law, a Court of Quarter Sessions, in an early case (*l*) which was submitted to the Superior Court, invited the judges to say whether the proper mode of finding out the rateable value of the railway had been adopted by them, and we find the following answer returned:

"The gross yearly receipts of the company, as occupiers of and carriers on the railway, must at least include the proper subject-matter of the rate. The sessions have, therefore, taken a sum agreed to represent them as the first point to start from. They then assume an amount of capital employed in the trade, and deduct from the former sum two per-centages on the latter, for the interest of this capital and the

(*k*) Post, 608.

(*l*) *R. v. Grand Junction R. Co.*, 4 Q. B. 38.

profits which ought to be made on it, and a third for the depreciation of stock beyond usual repairs and expenses; 4thly, they deduct from the gross receipts the annual costs of conducting the trade; 5thly, they deduct the annual value of all the land occupied by stations, &c., and elsewhere rated; and, 6thly, a sum per mile for the reproduction of rails, chairs, sleepers, &c. These deductions, taken together, seem to us to include whatever is properly referable to the trade, and distinguishable from the increased value which that trade gives to the land. We do not now speak of the *amounts* allowed under each item, and we decline to give any opinion on this point, which is properly for the sessions; but if these are the proper heads of deduction, then the residue must represent the value of the occupation; and if so, this alone is brought into the rate, and the profits of trade are excluded. Accordingly, the sessions have found, as an inference from the facts, that the residue is the sum which a tenant from year to year might reasonably be expected to give for the railway and corporeal hereditaments now occupied by the company in connexion with the railway, exclusive of the stations and other buildings rated separately, such tenant being assumed to have the same and no other power of using the railway,—the same and no other advantages and privileges,—as the company now possess. *If the deduction exhaust that portion of receipts referable to trade*, the inference of the sessions is fair. If the advantages and privileges which the company possess are attributable to their occupation, and would pass with it, their assumption is well founded. We agree with them in both.”

The Court of Quarter Sessions is the Tribunal to assess the Value of the Occupation.

So, in a subsequent case, where the same elaborate process of making deductions from the gross receipts of the railway company had been adopted, the sessions submitted to the judgment of the court, as a distinct question for their determination, “the principle upon which the calculations were founded, and the propriety and sufficiency of the deductions” (*m*). But the court, although thus pointedly invited to the discussion of the amount and sufficiency of the deductions made by the sessions, declined, as they had done before, to answer the question in the following terms:—

“We are to see whether these deductions include all such as ought to be made on an ordinary occupation, exclusive of trade, and also all such matters as are distinctly referable to the trade only, and do not enhance the value of the occupation. If so, the principle of the rate is right; *whether sufficient in amount under each head has been allowed, it is not for us to determine.*”

And, lastly, after having discussed in detail the various heads of deduction claimed by the company, but resisted by the parish officers, the judgment proceeds as follows:—

“Two more questions are stated; the first, as to the mode of ascertaining the tenant's profits in order to their deduction from the rateable value. The respondents have taken the original value of the plant or moveable stock, and allowed 10*l.* per cent. upon it for these profits, as well as the profits of trade. The appellants say, that the more correct mode would be to ascertain them by a per-centage on the gross receipts, and claim to have 15*l.* per cent. deducted from these on that account. We are very unwilling to withhold our aid in settling questions for the sessions of such novelty and difficulty as the railway rating must often bring before them; but we

(*m*) *R. v. Great Western R. Co.*, 6 Q. B. 184, post, 587.

The Court of Quarter Sessions is the Tribunal to assess the Value of the Occupation.

ought not to go beyond our province, and so, perhaps, mislead them. This question involves no principle of law, and we decline to answer it."

These cases, and others of a similar character, appear to justify the remark we have made, that Justices at Quarter Sessions are left to ascertain, as they best can, the rateable value of a railway (*n*); nor does there seem to be any well-grounded expectation, that the legislature will interfere for their relief. The earnest appeal made, as we

(*n*) In some of the cases, the Courts of Quarter Sessions seem practically to treat the land as the principal source of profit, whilst the capital and stock-in-trade,—the latter consisting of the locomotive engines and carriages used by the company in their trade as carriers,—all personal property, and consequently not rateable, seem to be considered as being merely accessory to the occupation of the land. This result has been arrived at by the process of making certain deductions from the gross receipts of the company, until the sessions at last arrive at the net rent which a tenant from year to year would be supposed to be willing to give for the occupation of the portion of the railway within the parish; and the Court of Queen's Bench has said, "Assuming that you allow sums sufficient in amount by way of deduction, we think the residue properly shows the rateable value of the land." Now it is to be observed that the rateable value of a farm or of a manufactory may be ascertained by a similar process to that introduced into railway rating, *i. e.*, by taking first the whole of the gross receipts of the farmer or manufacturer, and then by making deductions sufficient in number and amount to exhaust every portion of the receipts, except that which the farmer or manufacturer would be willing to pay as rent for his farm or manufactory, but it is extremely improbable that a surveyor would, under any circumstances, adopt this process (which seems ingeniously contrived to run up the rate on railways to the highest point) in proceeding to rate a farmer, much less a manufacturer. If we look accurately into the facts we shall see that the profits of a railway company, working their own line, are chiefly derived from two sources—the occupation of a certain quantity of land on which the railway is formed, and the possession of capital in money, and valuable personal property, in the shape of locomotive and other carriages, and various kinds of unfixed machinery: the company also employ a numerous body of clerks and other servants to carry on the business of the railway. So the profits made by a farmer of land are, in like manner, chiefly derived from the same sources, *i. e.*, the occupation of a certain quantity of land, and the possession of a floating capital in money, and of personal property usually called his stock-in-trade, including cattle and other

animals: he also employs numerous labourers in the management of his farm. Again, take the case of a large cotton or other manufacturer. Here we find an extensive manufactory, a large floating capital, valuable machinery, for the most part unfixed, and not liable to be rated, and a number of clerks and workmen employed in carrying on the trade.

In each of these instances, the railway company and the farmer are liable to be rated in respect of the occupation of the land, and the manufacturer in respect of the manufactory; but neither of them is liable to be assessed in respect of his personal property, *i. e.*, his machinery, implements, stock-in-trade or capital. Nor are the profits of his trade, as such, liable to be taken into account in assessing the rate.

In each of the supposed cases, the law requires that the occupier of the hereditament shall be assessed upon its net annual value, to be ascertained in the manner specified in the Parochial Assessment Act; and the question to be solved is, whether by the present mode of rating railways, the desired result is attained. It must be remembered that there is an express provision in the last-mentioned act "that nothing therein contained shall be construed to alter or affect the principles or different relative liabilities (if any) according to which different kinds of hereditaments are now by law rateable" (*ante*, 579). So that no new or additional burthen is thrown upon any kind of property by that statute. Farmers and manufacturers would probably be liable to be rated for their stock-in-trade but for the stat. 3 & 4 Vict. c. 89 (*ante*, 580), because it is now generally understood that the decision declaring the non-liability of the farmer to be rated for his stock-in-trade, as decided in *R. v. Capel* (12 Ad. & E. 382), was founded on the technical ground that the case did not state that the farmer was an inhabitant of the parish; and it was a representation of that circumstance which induced Parliament, upon the demand of the tithe-owners, to pass the 3 & 4 Vict. for one year only. It is unnecessary to comment upon the obvious injustice of rating railway companies upon profits derived from personal property, whilst other owners of similar property remain untaxed in respect of it. See further on this subject, *post*, 614.

have seen, by the most eminent of our judges, produced no effect on our legislators; and, inasmuch as land owners, owners of tithe rent charges, and railway and canal proprietors, are alike deeply interested, if even the slightest change is made in the relative proportions in which the rates are contributed, it is probable that matters will remain as they are. We must therefore proceed diligently to prosecute our inquiries for the purpose of pointing out the best mode of encountering difficulties which cannot be avoided.

*Observations as
to Branch Lines.*

With respect to the third obstacle which arises from drawing a distinction, in rating, between a main line of railway and a branch line, and by treating the latter as a feeder of traffic, and consequently as a source of profit to the former, we may remark, that the necessity of discussing this point also arises from the ill-digested provisions of the Parochial Assessment Act. The difficulty seems to arise in the following manner. An independent company may be supposed to obtain an act of Parliament, and to construct a short line of railway which may form a junction with, or be near to, a trunk or main line belonging to another company. It may likewise be near to another line belonging to a third company; and thus this branch line becomes an object for competition between the proprietors of two other lines of railway, because it may be advantageously used by either of them, as a feeder to their own line and a withdrawer of traffic from the other.

Branch lines considered as feeders of traffic.

Now, it is evident, that so long as this supposed branch line remains in the hands of an independent company, who may work or lease it, it is quite correct to assess it to the poor's-rate according to the rent which either of these rival companies may be willing to pay for it, making of course the proper deductions according to the statute; and it will be found, when the cases are examined, that the learned judges are quite agreed on this point. But in two cases (*o*), where other companies had succeeded in acquiring branch lines of railway, either by purchase or by becoming lessees, much discussion was raised upon the question, whether their value as feeders to the main lines, into which they had been merged, was or was not to be taken into account in assessing the rate in a particular parish; and after these cases had been discussed at great length in the Court of Queen's Bench, the learned judges differed in their opinions, and an additional perplexity is thus presented to our parochial authorities, and the legal puzzle is subjected to an additional entanglement. We believe, however, that on a careful examination of the two cases referred to, it will be found, that the learned judges do not differ in their opinions upon any principle of law; but that they merely drew different inferences from the facts as they were stated in the special cases (*p*).

Having made these preliminary remarks, we proceed to direct

(*o*) Post, 598, 601.

(*p*) The proper mode of rating a branch line is shortly discussed, post, 594.

*Observations as
to Branch Lines.*

*R. v. London and
South-Western
R. Co.*

attention to the numerous cases which have been decided; and, for the sake of brevity, such portions only are extracted as appear necessary to elucidate our inquiry, and a reference to the cases will supply any omission which may be inadvertently made of material points connected with the questions under consideration (*q*).

The London and South-Western case (*q*), which was first submitted to the Court of Queen's Bench, contains useful elementary information on the subject of railway rating, but the general question, as to the exact mode of rating railways, was not much discussed. The principal point suggested in that case, on behalf of the railway company, was, that the tolls alone (as distinguished from fares) which the company were authorized to take from the persons who used the railway with their own carriages formed the basis on which the rate was to be calculated; and the case found as a fact, that, if the company were wrong on this point, then a certain sum (70,000*l.* per annum for the whole railway) was the rent which a tenant would be willing to give for the occupation of the railway, with all its attendant advantages, under the provisions of the Parochial Assessment Act. The sums were therefore agreed upon between the parties, and it was unnecessary to consider whether the profits of trade, as such, were included in the larger assessment of 70,000*l.* per annum or not (*r*); and, the court having ruled that the principal point contended for by the

(*q*) The following table shows the order of the cases in point of date, and the various books in which they are reported:—

- June, 1842.—*R. v. London and South Western R. Co.*, 1 Q. B. 558; 2 Railw. C. 629; 6 Jur. 686; 2 Gale & D. 49; 11 L. J. (M. C.) 93.
- May, 1844.—*R. v. Grand Junction R. Co.*, 4 Q. B. 18; 13 Law J. (M. C.) 94; 8 Jur. 508.
- Jan. 1846.—*R. v. Great Western R. Co.* (first case), 6 Q. B. 179; 20 L. J. (M. C.) 80; 4 Railw. C. 42.
- Feb. 1851.—*R. v. London and Brighton R. Co.*, 15 Q. B. 313; 6 Railw. C. 440; 20 L. J. (M. C.) 124. [Two other cases, *R. v. South Eastern R. Co.* and *R. v. Midland R. Co.*, were decided by the judgment given in this case, see post, 606.]
- Feb. 1852.—*R. v. Great Western R. Co.* (second case), 15 Q. B. 1085; 21 L. J. (M. C.) 84; 7 Railw. C. 130.
- Jan. 1854.—*R. v. Newmarket R. Co.*, 3 E. & B. 94; 23 L. J. (M. C.) 76; 18 Jur. 572.
- Feb. 1854.—*R. v. South Eastern R. Co.*, 3 E. & B. 491; 23 L. J. (M. C.) 84; 18 Jur. 673.
- Nov. 1860.—*R. v. North Staffordshire R. Co.*, 30 L. J. (M. C.) 68.
- Jan. 1861.—*R. v. Fletton*, 30 L. J. (M. C.) 89; 7 Jur. (N. S.) 518.
- April, 1863.—*R. v. St. Pancras*, 3 Best & S. 810; 32 L. J. (M. C.) 146; 9 Jur. (N. S.) 1102.
- May, 1863.—*R. v. Lord Sherard*, 33 L. J. (M. C.) 5.
- " " *R. v. Eastern Counties R. Co.*, 4 Best & S. 58; 32 L. J. (M. C.) 174; 9 Jur. (N. S.) 1339.
- " " *R. v. Stockton and Darlington R. Co.*, 8 Law T. (N. S.) 422.
- Nov. 1863.—*L. and N. W. R. Co. v. Churchwardens, &c. of Cannock*, 9 Law T. (N. S.) 325.
- Nov. 1864.—*R. v. Midland R. Co.*, 11 Law T. (N. S.) 303; 13 Weekly Rep. 202.

(*r*) It is said by the court, that the stat. 3 & 4 Vict. c. 89, which, as we have seen, abolished rating in respect of the profits of stock-in-trade, or other personal property, had little or no bearing on the question submitted to them. See 1 Q. B. 577. And

it is remarkable, that, from the peculiar mode in which all the cases have been prepared, the effect of this statute on railway rating has never been directly discussed.

company could not be sustained, the purposes for which that case seems to have been raised were answered.

*Observations on
decided Cases.*

In the Grand Junction case (*s*), the next in order, the same question, as to making the tolls the basis of the rate, was again submitted to the court, and a distinction in favour of the railway company was attempted to be set up, on the ground, that persons other than the company used the railway as carriers, which was not the state of the facts in the previous case. The court, however, adhered to their former decision, and said that the two cases were in principle the same. It is said on this point,—

*R. v. Grand
Junction R. Co.*

“Each of the two companies must be rated in respect of the occupation of the land: one of them derives no benefit from that occupation, except by carrying goods and passengers, and the division of that profit into tolls and fares we think merely nominal; the other, in addition to this mode of profit by occupying, also derives a profit from allowing others to carry goods and passengers on the line also; and this latter profit is properly called tolls. Still, in both cases, the inquiry must be the same—What is the value of the occupation, from whatever source derived? In neither can the profits of trade, as such, be brought into the rate; but, if the ability to carry on a gainful trade on land adds to the value of the land, that value cannot be excluded on the ground that it is referable to the trade.”

But another question of great importance was, in the Grand Junction case, submitted to the court. It appeared that the Court of Quarter Sessions ascertained the rateable value of the railway in the following manner:—The gross receipts of the company were first ascertained, and, the problem being to cut down this gross sum to the net rent which a tenant would give for the railway, various items of deduction, amounting to six in number, were allowed; and, an attempt was thus made to call upon the Court of Queen's Bench to determine the proper method of ascertaining the rent; and also to verify the calculations upon which the estimate was founded. It was upon this occasion, and in the language already cited (*t*), the Court of Queen's Bench first intimated, in a case of railway rating, that it was sufficient for them to say, that the proper heads of deduction had been observed, but with the amounts allowed under each item they had nothing to do.

We now arrive at the first Great Western case (*u*), and the first thing which arrests our attention in the judgment is a recapitulation by the court of the points decided in the two previous cases, which we have already commented upon. The court say,

*R. v. Great
Western R. Co.
(First case.)*

“In these two cases we laid down, that, although the profits of trade carried on

(*s*) *R. v. Grand Junction R. Co.*, 4 Q. B. 38, ante, 586, note (*q*).
(*t*) Ante, 582.

(*u*) *R. v. Great Western R. Co.*, 6 Q. B. 184; ante, 586, note (*q*).

*Observations on
decided Cases.*

*R. v. Great
Western R. Co.
(First Case.)*

by the occupier of the land upon it cannot be made directly the subject of the rate assessed in respect of such occupation, and the value of the occupation alone was the proper subject, yet in that value was to be included whatever at the time formed part of it, whether permanently or not, and from whatever source derived; and, therefore, of course, not less so, although derived, in any proportion, from the fact of the trade being so carried on upon it. Further, that although the sum to be sought was that which, after all due deductions made, a tenant might be found to give by way of rent from year to year, in order to be placed as occupier in the same position as the party rated, yet this was to be sought, not by drily considering what rent would be given for so many miles of railway as happened to be in the rating parish, apart from all the actually co-existing circumstances, but by including in the consideration all such as would necessarily attend upon the occupation under the demise, and influence the tenant's mind as to the amount of rent which he would give. In the application of these principles, the practical difficulty for those who assess the rate in cases of such complication as railways often present, will be, to distinguish accurately between that which is properly referable to the trade alone, and that increase of value which the carrying on of the trade upon the land gives to the occupation of it. The case of the *Grand Junction Railway* (x) presented many circumstances the same as exist in the case now before us, and we thought that the parish officers there had successfully met the difficulty."

The court then proceed to point out the proper items of allowance which ought to be made; and, as the rules laid down have been since almost invariably adopted, it will be useful to state them in some detail.

"We are now to examine the rate stated in this case, only, however, as to its principles, and so much of its details as involve principle; beyond that, and especially as to the accuracy of calculations, the questions must be for the sessions alone. We have here a company, sole occupiers of a line of which they are owners. Of this, the land in respect of which they are rated forms a part; they are also sole occupiers, as lessee, of two branch lines, both issuing out of the line first named. Upon all these lines they carry on exclusively a large trade as carriers, the net receipts of which, from the branch lines alone, if set against their expenses and rent, would make the occupation of them in fact a losing concern; but this occupation increases the traffic upon the main line, and, for the sake of this, the company are content to sustain that partial loss. In order to ascertain the rate, the course pursued has been, to take the gross receipts per mile in the respondent parish; and this sum is not in dispute. The deductions to be made from this are calculated on a mileage proportion of all the expenses and outgoings, taking the whole three lines as one entire line in all particulars in which the appellants are at all chargeable; and we do not understand this mode to be objected to. Setting the proportion of these per mile against the gross receipts per mile, the residue has been taken as the rateable value per mile. We are then to see whether these deductions include all such as ought to be made on an ordinary occupation, exclusive of trade, and also all such matters as are distinctly referable to the trade only, and do not enhance the value of the occupation. If so, the principle of the rate is right. Whether sufficient in amount under each head has been allowed, it is not for us to determine. Nine heads are first stated, which are intended to represent the annual expense of keeping in repair the way, stations and other buildings, the rates and taxes, other than the property tax, payable on them, the expenses of directing and

(x) 4 Q. B. 18, ante, 587.

carrying on the business, the government duty on passengers, and some incidental charges connected with the trade. Thus far the outgoings allowed for are annual. The appellants here first object, that, besides an allowance for the merely annual repairs, they are entitled to one in respect of the depreciation and wear and tear of the rails and sleepers, the solid timber and iron work of their own principal line, and this although hitherto they have not charged such expense against their income, but defrayed it out of their capital (*y*). The appellants next claim to deduct the rateable value of the buildings appurtenant to their own line, and also to the branch lines respectively, and rated and rateable elsewhere than in the respondent parish, separately from the railway itself. This also is an allowance which was conceded in the case last referred to; for it would be hardly worth while to distinguish between those rated and rateable only; and we have no means of drawing the distinction in fact. It is to be remembered, that the respondents properly treat the whole line, the whole profits, the whole outgoings, as entire; and then the question is, whether there is any distinction between this and other outgoings necessary to the earning the profits by which the rateable value of the land in the respondent parish is enhanced. It seems to us there is none; and, if so, we agree with the learned counsel for the appellants, that, in principle, it is indifferent whether the station be in the same parish or at a distance. The appellants claim, thirdly, an allowance for 21,000*l.* yearly, interest on the sum expended in forming their company, obtaining their act of Parliament, raising their capital, and other original expenses. For this there is no foundation. These expenses have no connexion with the rateable value of the railway. They might all have been incurred, and no railway ever constructed. As well might the purchaser of an estate with borrowed money, and after an expensive litigation as to the title, claim to deduct his interest and expenses from the poor rate on the land when in his occupation. They neither add to the value of the occupation, nor are any way necessary to the making it up. The appellants then claim to be allowed in respect of 10,000*l.* paid by them as income-tax under stat. 5 & 6 Vict. c. 35. The claim is very shortly and unsatisfactorily stated. In respect of what the payment has been made, we are not informed on either side: the argument respecting it was short. The respondents treated the claim as made in respect of the charge on the property in land payable by the owner; the appellants claimed it in respect of the charge on the occupation payable by the tenant, and to this extent at least it does not strike us that there is any reasonable distinction between this and any other outgoing chargeable on the tenant, which would certainly affect the amount of the rent he would be willing to pay. The fifth claim is to be allowed for such additional parochial assessments as may become payable, it is not said when or where, in consequence of the recent decisions of this court, upon which we will only say that we think the court would have been well justified in refusing to permit it to form part of the case. In the sixth place, the appellants claim to be allowed a deduction in respect of their loss on the two branch lines before referred to. We think this cannot be allowed. If the rate in question had been imposed on land forming any part of the branch lines themselves, it is clear that the circumstance of the receipts not equalling the rent,—in other words, that the line was worked at a loss,—could not have affected the rate; the occupation would have still been beneficial in the sense in which that word is used, for the purpose of assessing the rate; and the rent, which, from whatever motive, the appellants found it worth their while to give, would

*Observations on
decided Cases.*

*R. v. Great
Western R. Co.
(First Case).*

(*y*) The court proceeded to say, that as this item was not paid out of the revenue, it must be disallowed; the contrary rule has been so clearly established in subse-

quent cases, that it is not necessary to transcribe this part of the judgment. See post, 593.

*Observations on
decided Cases.*

*R. v. Great
Western R. Co.
(First Case.)*

have regulated the amount. This is not that case in the way in which it is sought to make this expenditure bear upon the rates assessed on any part of the main line; it is more like money laid out in the way of improvement, for which no deduction should be made. If the lessee of a coal-mine were to open roads through adjoining lands rented under a separate demise, in order to facilitate the access of customers to the mine, and so increase its profits, the expense of such roads would certainly not be an outgoing to be allowed for by the overseers. Two more questions are stated: the first as to the mode of ascertaining the tenants' profits, in order to their deduction from the rateable value. The respondents have taken the original value of the plant or moveable stock, and allowed 10*l.* per cent. upon it for these profits as well as the profits of trade. The appellants say that the more correct mode would be to ascertain them by a per-centage on the gross receipts, and claim to have 15*l.* per cent. deducted from these on that account. We are very unwilling to withhold our aid in settling questions for the sessions of such novelty and difficulty as the railway rating must often bring before them; but we ought not to go beyond our province, and so perhaps mislead them. This question involves no principle of law, and we decline to answer it. The last is only raised by the respondents provisionally, in case any of the deductions claimed by the company should be allowed by us. But this has been done:—in ascertaining the tenants' profits, they have calculated the per-centage on the original value of the moveable stock; but the sessions have found, that, at the time of the rate being made, the value had become less by 80,000*l.*; and the respondents contend that the per-centage should properly be made on the smaller sum. This seems to us correct; they are to make the rate from year to year, or for whatever shorter period, *conformably to the facts as they exist at the time of making it* (z). They may not know, nor have any means of knowing, what the value was originally or in any former year. If, at the end of five or ten years, they are to be driven back to the original value, they may be equally required to ascertain it after an interval of a century. No hardship is inflicted on the appellants by this; they may, and they ought, as prudent owners, to keep up the stock at its original value, and in this very case they have claimed a deduction for doing so. If that claim were properly made, the original and the present value would be the same. Although, however, we thus answer this question in favour of the respondents, they cannot avail themselves of the decision so as to increase their assessment beyond its present amount."

*R. v. London and
Brighton R. Co.*

The case next in order of time, *R. v. London and Brighton R. Co.* (a), furnishes some useful points. One of the most important is, that the rate must be founded upon the parochial principle, and not upon a mileage calculation. The court observes,—

"The question is as to the principle on which the rate is to be imposed, whether upon what has been called the mileage principle, that is, by treating the whole line of railway (trunk and branches) as one entire subject-matter, and the whole rateable value, however constituted, as entire, and then, for the purpose of rating, dividing it among the several parishes, simply according to the distance which the line passes through each; or upon the ordinary principle of ascertaining the actual rateable value of the land occupied by the company in each parish, by the rules which are applicable to any other land occupied by other bodies or persons for other purposes. The judicial decision of this question has hitherto been avoided by agreement and mutual concession; and we have delayed to pronounce our judgment on it, not so

(z) *Acc. R. v. North Staffordshire R. Co.*, 30 L. J. (M. C.) 68, post, 617.

(a) 6 Railw. C. 440; ante, 586, n. (q).

much from the difficulty of determining the rule of law, as from that which arises on its practical application. This presses particularly against what is called the parochial principle. How are you, by any means now in the power of parish authorities, to ascertain the particulars of profit and the outgoings, from a comparison between which the rateable value of the land occupied is to be deduced, both profit and outgoings being affected by circumstances spread through the whole line? On the other hand, against the mileage principle is to be urged, that although, as regards the railway company—an entire body, with an entire interest—it is matter of indifference how you divide a rate assumed to be entire for the whole line; yet as the parishes are bodies with separate interests, there is a manifest injustice in attributing to the same space of land the same proportionable share of the whole rate everywhere; the land in the several parishes notoriously earning the profits, and occasioning the outgoings, in very different proportions; because you cannot do this without depriving some parishes of what they should receive in order to give to others what they should not. If, however, the legal principle be clearly ascertained, it is clear that the difficulties in applying it, or even the practical imperfection which circumstances may occasion in applying it, are not to influence our decision. It is unnecessary to consider what the force of the argument would be, if it could be shown that there was an absolute impossibility of applying it, for nothing like that exists in the present case.

“Now upon the legal principle we have no doubt. The poor's-rate and the principles of its assessment are entirely statutory. The 6 & 7 Will. 4, c. 96, made expressly with the view ‘to establish one uniform mode of rating for the relief of the poor,’ prescribes the rule: the rate must be made on ‘an estimate of the net annual value of the several hereditaments rated thereunto,’ such value to be arrived at in the manner stated in the first section. The subject is parochial; the inquiry is to be conducted by parochial authorities, with limited powers. If any matters specified in the section are locally situate without the parish—that is, if any such affect the amount of ‘the net annual value,’ or ‘rent reasonably to be expected’—they will of necessity fall within the range of the inquiry; but beyond this the principle does not go.

“This principle, so limited and understood, was not first created by the statute just mentioned; the court had decided so early as 1827, in *R. v. Kingswinford* (b), that it was to be found in the original statute of Elizabeth; and since that decision it has been uniformly applied to cases where the same party, whether company or individual, occupies in different parishes land forming one entire property, such as a canal, though the profits may be earned in different proportions, and with a different rate of outgoings in each. The value which the land occupied in each parish produces, after the due allowances, is that upon which the occupier is to be rated in each.

“It is unnecessary to cite more authorities in support of a proposition now become settled; the decisions will be found to flow in a remarkably uniform current since the case last cited (c). Whether the circumstances of railways, which were in 1836

(b) 7 B. & C. 236; 1 Mann. & R. 20.

(c) In *R. v. West Middlesex Waterworks Co.*, Ell. & Ell. 716; 28 L. J. (M. C.) 135, Wightman, J., in delivering judgment, said, “The parochial principle of apportionment has been unanimously upheld, hitherto, in respect of all canals, railways, water companies, gas companies and bridges.” See also *Chelsea Waterworks Co. v. Putney*, 29 L. J. (M. C.) 236; *R. v. Sheffield United Gas Light Co.*, 32 L. J. (M. C.) 169; 4 Best & S. 135, in which Blackburn, J., in

delivering judgment, said, “The principle on which the stations, works, buildings, &c., are to be valued, as laid down in *R. v. Mile End Old Town*, ante, 580, n. (h), and *R. v. West Middlesex Waterworks Co.*, is that they are to be valued as fixed property deriving some additional value from their capacity of being used as part of the gas works, a rule which in practice it is found not difficult to apply, though it is not theoretically very definite.”

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a comparatively infant interest, escaped the notice of the legislature, or were advisedly thought not to need any special provision, certain it is that none was made; and, as in its broad principles the occupation of a railway company does not differ from that of a canal company, a court of law has no choice but to apply to it the same general law under which, in its terms, it certainly falls.

“It is to be remembered, that the amount of assessment on a particular occupier is a question between that occupier and the rest of the contributors to the whole rate; and the consideration of that occupier’s relation to the contributors to another rate in another parish is irrelevant to this question; he may be rated in that other parish too high or too low, but this is a matter which does not interest the contributors to the first-named rate, nor have they influence in the settlement of it: and this suggests the answer to a difficulty raised on the argument in this case—if you give Croydon the full benefit of all the earnings made by the railway in the parish, what is to be done in the case of a parish on some branch line, in which the company may work at a loss? The answer is, that that case must be decided, when it arises between the company and that parish, on the same principle precisely as the present, without reference to Croydon.

“This is quite distinct, however, from the consideration of any expenses, wherever arising, which the occupier can show to be necessary for keeping the hereditament which is the subject of the assessment at the value which is made the measure of it. The language of the statute is quite general on this point, and lets in all considerations which are necessary for the just protection of the company in each parish.

“Whatever difficulty there may be in applying this principle, it has been in fact overcome in the present case. Here, under circumstances more than commonly complicated, the sessions have presented us with calculations to meet the parochial as well as the mileage principle; they are exclusively the judges of the fact, and we must assume that they have been able to arrive at a just conclusion. Nor, indeed, does it appear to us, under any circumstances, to be insuperably difficult to impose the rate fairly, if only the interested parties will deal candidly with each other. We cannot assume that they will deal otherwise; but if the company should improperly refuse to the overseers of any parish information which it is in their power to afford, and is proper to be afforded, for the purpose of fixing the assessment on them justly, they must, if properly dealt with, be the sufferers.”

*Production of
company’s
accounts recom-
mended.*

The court then proceed to comment on two sections in the special act which authorized the parish officers to inspect certain accounts kept by the railway company; they observe that the materials for making these accounts up were in the possession of the company, and that it was manifestly their interest to produce them, because out of them would arise the evidence on which the claim for deductions must be supported; and the court add, that if the company would not afford the information necessary for these being duly made, they must expect that any court of justice would presume against them; and that there was the further substantial consideration, that in all litigation, even if successful, the company must, as considerable ratepayers, at all events, contribute very largely to their opponent’s expenses, and they conclude as follows:—

“On these broad principles, therefore, that the statute provides but one rule, and intends to secure uniformity; that we have no power to substitute another;

that the decisions hitherto are consistent; and that there is no insuperable difficulty in the practical working of the rule; we are of opinion that the respondents are right in their principle of assessment, and that upon this point our judgment must be for them."

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The second question submitted to the court in this case was, on the right of the company to a deduction from the rateable value, beyond the ordinary expenses of keeping the railway in repair, in order to countervail the depreciation which takes place in the value of the permanent way, and to maintain it in a state to command the supposed rent, which is the measure of the assessment; and upon this point, the court decided that the company were entitled to make this deduction, even although no such expenses had been actually incurred or charged on the revenue during the current year, and this ruling was affirmed in a subsequent case (*d*), overruling, as we have already remarked, a previous decision (*e*).

Allowance to
reproduce per-
manent way.

On a third question, which arose as to the effect of an exchange toll, it appeared that the railway company, who were appellants, had agreed with another railway company that the traffic of the latter should pass free over a certain portion of the line of the former, in consideration of the traffic of the former passing free over a certain portion of the line of the latter; and that a certain distance of the appellants' line, within the respondent parish, was affected by this arrangement; the court said that the sessions rightly decided this to be rent in kind, earned by the land, but that these earnings must be subject to exactly the same deductions as if they were received in money.

The value of an
exchange toll is
to be included in
the assessment.

The only remaining point in this case turned upon the narrow question, from what date the overseers ought to make their calculations as to the assessment on the company. The date of the rate was the 20th of November, 1847; and as regards the company, it was based on a half-yearly statement published by them on the 10th of August, but made up only to the 30th of June preceding. In the interval between the 30th of June and the 20th of November, the value of the working plant of the company had been increased from 260,000*l.* to 350,000*l.* The deduction on this outgoing the company claimed to be entitled to; and the court decided that they were entitled to it, and observed that the sessions ought to avail themselves of every light that can be afforded them, down to the latest period antecedent to the actual making of the rate, in order to bring it to the greatest possible accuracy; that overseers, in making a prospective rate, are to make it on the supposed prospective value, ascertained by

A rate must be
made on the pro-
spective value of
the hereditament.

(*d*) *R. v. Great Western R. Co.*, 21 L. J. (M. C.) 85; 15 Q. B. 1087; post, 594. (*e*) Ante, 589, note (*y*).

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decided Cases.*

*R. v. Great
Western R. Co.
(Second case.)*

Rating a branch,
where branch
fused in main
line, but worked
differently.

them, as well as they can, from the latest evidence in their power as to antecedent value.

In the second Great Western case (*f*), an embarrassing question arose as to the proper mode of rating two miles and a half of a railway twenty-five miles in length, the latter being a branch of the Great Western Railway, and, with the exception of the few remarks which were made by the court in commenting on the the sixth head of claim in the case before referred to (*g*), this was the first time that the distinction between a branch and a trunk line had been discussed in the Court of Queen's Bench, although at Courts of Quarter Sessions the subject was beginning to attract considerable attention. The question submitted to the court was, whether, for the purpose of the rate, these two miles and a half were to be considered as a part of this branch, treated in most material respects as an independent whole, or whether as part of the whole Great Western Railway, including the branch, without introducing any distinction between branch and trunk; and it appeared that the appellants had proceeded on the former, and the respondents on the latter assumption. The court observe upon this important point,—

“ We think that it will clear our way to adopt, in the first place, for the sake of argument, the assumption of the respondents. Both parties have agreed that it is important to settle four points as cardinal to the decision of the case. First, the total gross annual receipts of the appellants from the whole line, including both trunk and branch; secondly, the total gross annual receipts from the two miles and a half; thirdly, the allowances and deductions which are to be made from the first-mentioned sum, so as to give the net rateable value of the whole line; and fourthly, the net rateable value of the two miles and a half. With respect to the first two of these, they are agreed; and although there be a difference as to the third, it is not so much in principle as in matter of fact; this difference we will settle first. The appellants, in addition to allowances for annual repair of rails and framework, and of moveable stock, claimed to be allowed two specific sums for their ultimate renewal and reproduction. We feel the difficulty which exists in theory with regard to this claim. This has been well stated in a pamphlet published since the argument by Mr. Smirke; but we fully considered the subject in coming to our decision in *R. v. London, Brighton and S. C. R. Co. (h)*, and we adhere to that decision. It is not necessary, indeed, to reconsider it now, for the respondents do not dispute it, contending that they have already made these deductions in the allowance for annual repairs. But as this allowance does not equal in amount the sum of the allowances which the appellants have claimed under the two heads of annual repair and ultimate renewal, and as no objection is or could properly be made before us on the grounds of excess in their calculation, it is clear that substantially this allowance has not been made. Upon this point, therefore, our decision must be for the appellants. They admit, indeed, that they do not annually set aside any sum to form a distinct fund for this renewal and reproduction, but the case finds that they retain out of their annual revenue a reserve fund for all contingencies, in-

(*f*) *R. v. Great Western R. Co.*, (second case,) ante, 586, note (*q*).

(*g*) Ante, 589.

(*h*) Ante, 590.

cluding these items among them; and further, that although by annual repairs and partial renewals, both the rails and the moveable stock are maintained in an efficient state, yet this will not supersede, as to either, the necessity of that fundamental renewal and reproduction for which these deductions are claimed. We consider, however, this question concluded by the decision referred to, and the effect of this would be, at all events, to reduce the rateable value in the respondent parish from the first to the second sum agreed to in the case.

"We have now then three points out of four settled; the remaining question is, what is the net rateable value of the two miles and a half? Now, as the net rateable value is that which remains of the gross receipts after all just deductions are made, it might seem at first sight that we might confine our inquiry to the two miles and a half, and that we only encumber the investigation uselessly by introducing into it any consideration of the gross and rateable value of the whole line. But the circumstances of a railway make this absolutely necessary. The inquiry may become, and undoubtedly does become, more complicated and difficult thereby, but it would be wholly incomplete and illusory, even in its result, unless we did so. Of the outgoings of a railway some are general, having no more connection with or influence on one part of the whole line than on any other, incurred for the sake of the whole line, and contributing to the profits everywhere. Of course these must be distributed, and to every mile must be apportioned some share, on whatever principle the apportionment is to be settled. Some, again, seem purely local, a tunnel here, an inclined plane there (we purposely mention striking and definite peculiarities), yet even these are contributing to the earnings everywhere; without these the traffic on either side could have no existence. It would be wrong to set these wholly and exclusively against the receipts earned in the same part of the line (*i*). We need not dwell on this, because in principle some distribution is on all hands agreed to be necessary, the only difficulty is, in determining what is to be adopted for making it justly,—a difficulty we believe actually insurmountable in fact, if strict mathematical accuracy were insisted on. It is our business, however, only to lay down the general rule, and, in applying it, much must be left not only to the experience and acuteness, but also to the good sense and good faith and candour of the parties concerned, whose interests will be found in the end to be best consulted by this mode of dealing. How, then, are the deductions from the total gross revenue which constitute the difference between it and the total net rateable value to be apportioned, so as to arrive at the actual sum which constitutes the rateable value of the two miles and a half? There is no difficulty in giving the first answer; indeed, principle and authority leave us no option, it must be done by acting on what is called the parochial principle. We are dealing with a parochial question, with one in which the interests of the several parishes on a line of railway are quite distinct. We are to ascertain what expenses are incurred in earning the gross receipts on the two miles and a half. What charges, parochial or otherwise, they are liable to, what is fairly to be deducted for tenants' profits, and so on, the same process in kind is to be gone through with regard to the two miles and a half, as would be with regard to the whole line, if that were all in one parish. We need not now repeat the reasoning which appears in our judgment before referred to. But, as we then said, and have now repeated, this principle does not preclude a consideration of charges and expenses wherever arising locally, which are necessary for keeping the subject of assessment at the value which is made the measure of that assessment. And further, we must add, that *wherever it is found that such charges and expenses do in fact apply equally to every mile of a railway, it is a convenient and*

*Observations on
decided Cases.*

*R. v. Great
Western R. Co.
(Second case.)*

*Rating a Branch:
Where Branch
fused in Main
Line, but worked
differently.*

*Mileage appor-
tionment of
expenses appli-
cable to whole
line.*

(i) See also acc. *R. v. Coventry Canal Co.*, 28 L. J. (M. C.) 102; F. & E. 572.

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Where Branch
fused in Main
Line, but worked
differently.

allowable mode to arrive by a mileage division at the proportionate part to be assigned to the 'miles in any particular parish. This is no departure from the parochial principle, if it be assumed as to particular charges (central superintendence, for instance) that a separate investigation of them as they actually arise in, or are referable to, a particular parish would lead us to the same result as a mileage distribution of the whole. It becomes by the hypothesis but another mode of arriving at it; in many cases it will be the more convenient and just, in some, perhaps, it may be the only practical mode.

“ Having now laid down the principle, it would be right to apply it to what the case finds as to the two modes which have been respectively adopted by the parties,— and first, for convenience sake, to that of the appellants. ‘ They,’ it is said ‘ have taken the gross receipts per mile per annum in the respondent parish exactly as the respondents had done, and they deducted from these the actual expenses of each mile ascertained or estimated.’ If the case had stopped there, we should have supposed that they had strictly acted on the true principle, and we must have adopted their conclusion. But it is evident from what follows that we should have been led into error. For the case goes on thus,—‘ In order to do this, they ascertained the actual expenses incurred on the branch alone, and where those expenses were common to the entire branch, they divided such expenses by the number of miles in the branch, and they considered the result to be the expense of each mile in the branch. A small portion of the general expenses of the entire railway, being those of central superintendence, printing and advertising, were apportioned on the branch in the ratio of the business or traffic upon it, and such portion was subdivided as before, on the mileage principle.’ This explanation shows that the appellants have, in fact, separated the branch from the trunk, except as to what they call a small portion of the general expenses of the entire railway, and then divided the expenses of the branch thus separated on the mileage principle.

“ We do not think them necessarily wrong in this last particular: it may have been no practical departure from the true principle, but only an allowable instance of what we have above stated to be a convenient practice, where the actual expenses were the same on every mile; and as no objection is made to this by the respondents, we must assume that it was so. But the separation of the branch from the trunk is, in its effect, the substantial ground of dispute between the two parties, producing, it may be said, nearly the whole difference between 254*l.* and 30*l.* per mile; and unless they are justified in this, it is impossible that their mode of ascertaining the rateable value can prevail, and we think they are not. We wish it to be distinctly understood that we come to this conclusion solely on the facts of this case. We are far from saying that there may not be cases in which two lines, connected for many purposes and worked by the same company, may yet have been kept so distinct by the statute or agreement which creates the connection, or by the circumstances under which they are worked, that, for the purposes of rating, they would have to be separately considered as two distinct subject-matters. When such cases arise, they must be dealt with according to their respective circumstances; but, *in the present case, the fusion of the two lines is complete.* The branch, as we have hitherto called it, is absorbed into the trunk, and whether Tilehurst is one or the other, our decision must have been the same; for, by the case it is found, that, by the 48th section of the special act, the appellants were enabled to purchase, and the company incorporated by that act to sell and transfer, the undertaking to the appellants, and, on the completion of the purchase, the appellants were to have and to hold the undertaking, the company to be dissolved, and the buildings and works to become part of the Great Western Railway. Accordingly, the appellants became the purchasers and proprietors, and by a subsequent act (9 & 10 Vict. c. xiv.), it was enacted, that it should thenceforth become part of the Great Western Railway.

"So much for what it is. And how has it been worked? The case finds, that, ever since its completion, and at the time of making the rate, it was and still is worked as part of the entire railway, known by the name of the Great Western Railway; that a certain number of engines and carriages are appropriated to it; and a certain number of officers and servants employed exclusively on it. No separate account of receipts and expenditure in respect of it is kept, but such receipts and expenditure are included in the general half-yearly revenue accounts laid before the proprietors. No separate annual account in abstract, showing the total receipts and expenditure in respect of it, is prepared by the appellants, so as to be furnished to the overseers of the poor of the several parishes through which the said branch passes, in conformity with the 8 & 9 Vict. c. 20, s. 107 (Railways Clauses Consolidation Act, 1845).

"Thus it appears, both by the statutes and the acts of the appellants, that there is absolutely nothing to distinguish the miles in Tilehurst, from miles in Paddington, Ealing, or any other parish on the original line. For the mere allotment of engines and carriages, or officers and servants, is nothing for the present purpose; it is merely an economical arrangement of the company for the working of this part of their line. We conclude, therefore, that a rateable value, ascertained by considering twenty-five miles as a distinct whole, cannot be correct; and, therefore, we cannot adopt that which is proposed by the appellants."

The court then proceed to consider the mode of rating adopted by the respondents. The case found on this head,—that having ascertained the rateable value of the whole railway, minus the stations, the respondents ascertained the gross actual annual receipts of the appellants in respect of each mile and portion of a mile of railway in their parish, and they assessed the appellants in respect of the two miles and a half in the ratio "which such annual receipts bore to the gross annual receipts of the company in respect of the entire Great Western Railway, trunk and branches, the rateable value of a mile of railway in the respondent parish being calculated in the same proportion to the rateable value of the whole line, exclusive of the stations, as the gross actual annual receipts in respect of such mile bore to the total of such actual annual receipts of the company."

The court disapproved of this mode of rating also, in the following terms:—

"It appears by the statement in the case, that the respondents have taken the deductions at the same rate for every mile of the railway; for they say, as the gross receipts of one mile to the gross receipts of the whole, so the rateable value of one mile to the rateable value of the whole: this is, in effect, to strike off from the gross receipts of a mile an aliquot part of the sum which is struck off from the gross receipts of the whole, and assumes at least that the expenses are at one uniform rate throughout the whole line. If the case were silent on this subject, we might have presumed that the respondents had ascertained this to be the fact, and then there would have been no objection to a mileage division; but the case, reasonably understood, excludes this, for it finds that the actual expenses of the company are not in the proportion of the actual gross receipts, either on the branch or throughout the entire railway; nor are either such gross receipts or such expenses at one uniform rate per mile throughout the entire railway. The counsel for the respondents laboured in vain

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to explain away the clear meaning of this passage, and, failing in that, they equally laboured in vain to show that all the expenses on a railway were necessarily to be distributed in calculation equally over the whole line.

“ In the result, we cannot adopt either of the modes suggested to us, or confirm the rate at either of the sums stated; the consequence must be, which we very much regret, that the award must be referred back to the learned arbitrators, to whom the parties, and we ourselves, are so much indebted for the labour and ability which they have bestowed on the case. We trust that the principles we have laid down will enable them to agree on a satisfactory rate, and that there may be no more litigation on the subject.”

*R. v. Newmarket
R. Co.*

*Dividend guaran-
teed on construc-
tion of branch.*

We now arrive at the *Newmarket case* (*k*), which introduced the difficulty already adverted to, as to the rateable value of a branch line, when it is viewed as a feeder of the traffic on the trunk or main line of a railway. The question before the court was shortly as follows. The appellants, the Newmarket R. Co., were authorized by their special act to make a branch railway fifteen miles in length, by which a communication could be established between their branch line of railway and the main line of the Eastern Counties R.; and the E. C. R. Co., being anxious that the branch line should be constructed, entered into an agreement (afterwards ratified by act of Parliament), wherein it was recited that “in consideration of the benefit likely to accrue to the E. C. R. Co. from the construction of the branch and the working of the railway of the appellants in connection with their railway, the E. C. R. Co. were willing to secure to the appellants certain advantages as thereafter expressed and defined;” and it was mutually agreed between the E. C. R. Co. and the appellants (amongst other things) that the appellants should proceed with all convenient despatch to make and complete, at their own expense, the branch railway: and that if, in any year after the branch line was completed and opened for traffic, the net profits made by the appellants should not be sufficient to pay a dividend of 3*l.* per cent. on the whole of their share capital, then the E. C. R. Co. should pay the appellants such a sum as would be sufficient to make up the dividend to 3*l.* per cent. The appellants thereupon constructed the branch, and opened it for traffic; but after the gross earnings of the branch railway in the respondent parish had been ascertained, the amount of deductions proper to be made exceeded those earnings by 27*l.*, which it was admitted was the deficiency or loss of the appellants, as occupiers of so much of the branch railway as lay within the respondent parish.

It appeared, however, that during the current year, in respect whereof the assessment was calculated, the E. C. R. Co. had paid the appellants, in pursuance of the provision contained in the agreement,

(*k*) *R. v. Newmarket R. Co.*, 23 L. J. (M. C.) 76, ante, 586, note (*q*).

3,700*l.*, being the sum required to make up the dividend on the share capital to 3*l.* per cent.; and the question submitted to the court was, whether this 3,700*l.* ought to be taken into account in ascertaining the annual rateable value of the branch railway, and, if it ought, the sessions assessed the value of that portion of it which was in the respondent parish at 116*l.*, otherwise at 21*l.* only.

Upon this state of facts the learned judges differed in their opinions upon the questions submitted to them; Coleridge and Erle, Js., held, that the payment ought *not* to be taken into account, as it was not an earning of the railway, nor rent, nor money in the nature of rent paid for the use of the railway, but a payment arising from a contract of guarantee, and not derived from the profits of the occupation of the land.

*Observations on
decided Cases.*

*R. v. Newmarket
R. Co.*

*Rating a Branch:
Dividend
guaranteed on
construction of
Branch.*

Coleridge, J., observed:—

“The substance of the actual agreement seems to be rather that of a guarantee, which is not to come into operation until the actual fruits of the occupation fall below a certain amount. The dividend on the capital is to be paid from the clear profits of the occupation; when they fail the guarantee comes in, not to increase those profits, but to make the dividend good from another and independent and collateral source. But it is the profits, after deducting the proper outgoings, upon which the rate is to be assessed; and when that is done, and not before, it will be seen whether the guarantee is to operate or not.

“It will be said, of course, that in order to arrive at the rateable value a negotiation for a lease from year to year must be supposed, and that the negotiation must be supposed to proceed on the footing of the lessee being placed in exactly the same position as the present occupiers, and this is unquestionable as to everything which necessarily arises from the occupation. But if thence it is inferred that the supposed lessee would necessarily, as such, have the benefit of this guarantee, it seems to me the very question in the case is begged. In point of fact, a lease of the line might very well be made, supposing the requisite powers, without involving a transfer of the benefit of this agreement to the lease.”

Erle, J., said:—

“The appellants contend that this sum ought not to be taken into consideration in assessing them as occupiers of the railway to the relief of the poor, as it is not an earning of their railway nor rent, nor money in the nature of rent paid for the use of their railway, but a payment arising from a contract of guarantee and not derived from the profits of the occupation of the land; and I am of this opinion—If the railway was let, the amount of rent would depend on the amount of annual profit derived therefrom, and it would be immaterial to the tenant whether this exceeded or fell short of 3*l.* per cent. on the cost price of the line. The cost of a construction does not indicate the profit to be obtained therefrom as a matter of fact, and it was decided in *R. v. Mile End Old Town* (1), to be no criterion in law of the rateable value of any property to the poor-rate. Furthermore, the sum paid under the guarantee is not rateable, for it is not a parochial profit. Nothing is due under the guarantee until the profits upon both the Newmarket and Chesterford and the Newmarket and Cambridge Lines have been ascertained, when, if the sum total is less than 10,500*l.*, the guarantors must pay. I am not able to discover

(1) 10 Q. B. 208; 16 L. J. (M. C.) 184. See ante, 580.

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how the failure of profits upon the parts of the line in distant parishes becomes a net profit upon the part of the line in St. Andrew-the-Less, for which a tenant of that part alone would pay rent. Furthermore, the rate upon the sum paid under the guarantie is not legal, for it falls not on the occupier, but on the guarantor. The rate is nominally on the Newmarket Co., but if it is sustained it must be paid by the Eastern Counties Co., who agree to make good the deficiency in case the net profits, after paying all deductions, will not yield a dividend of 3*l.* per cent. on the capital; in proportion as the deductions are increased, the net profits are less, and the deficiency to be made good is greater. On these grounds I have come to the conclusion that the sum paid under the contract of guarantie in this case was not rateable, and that the rate ought to be reduced accordingly."

On the other hand, Lord Campbell, C. J., whilst entirely concurring in the general principles laid down by these learned judges, arrived, nevertheless, at a different result on the effect of the statement of the facts in the case, as will appear from the following judgment (*m*); and it seems, therefore, that the difference of opinion did not so much arise on any question of law, as on the construction which ought to be put upon the facts stated in the case. He said,—

"I am of opinion that, in assessing the appellants for the portion of the branch line which is in the limits of the respondent parish, this payment ought to be taken into consideration. I think it is received by the appellants in respect of their occupation of their railway, and is part of the profits of that occupation. It is evidently made in consideration of an advantage which the Eastern Counties R. Co. calculated that they would derive from this branch railway from Chesterford to Cambridge. Whether it be a fixed annual sum, or a sum depending upon a contingency, it is equally in respect of the use made of the railway occupied by the appellants, and, when received, it is part of the profits of that railway. If the Eastern Counties R. Co. paid the appellants a sum of money for being allowed to bring passengers in their own carriages from Chesterford to Cambridge, gratis, that these passengers might be carried on the Eastern Counties Line for hire from Cambridge to London, little doubt can be entertained that such a payment would be part of the profits of the branch of the appellants, and it seems to make no dif-

(*m*) In *R. v. Fletton*, 30 L. J. (M. C.) 89, Blackburn, J., said that Lord Campbell dissented on the ground that the payment under the agreement was not in the nature of a collateral guarantee, but a sum received by the appellants in respect of their occupation of the railway, and was part of the profits of that occupation, and ought therefore to be taken into consideration in assessing the value of that occupation. In *R. v. Fletton*, the appellant, the E. C. R. Co., who were sole owners of a station, in 1848 entered into an arrangement by deed with the North Western R. Co., by which the latter were for 999 years to have the joint use of part of the station, and the exclusive use of another part, on certain terms. In consequence of a subsequent falling off in their traffic, the station became of less value to the North Western R. Co., and the real present value to them was much below the sum actually paid by them to

the E. C. R. Co. under the deed. It was held upon a case in which the E. C. R. Co. were to be deemed the persons rateable for the whole occupation of the station, that *they* were assessable on the full amount which they received from the North Western Co. And it was afterwards held, that the E. C. R. Co. were rateable as the sole occupiers (under the terms of the deed) of so much of the station as was not in the exclusive occupation of the North Western R. Co.; and that, in rating them for such occupation, the sum paid by the North Western Co. must be considered as part of the profits; *R. v. Lord Sherard*, 33 L. J. (M. C.) 5. In *R. v. Midland R. Co.*, 11 L. T. (N. S.) 303 (Nov. 1864), it was held, that the company could not be rated as occupiers of a line over which they merely had running powers, a mere easement.

ference that the payment is made in respect of passengers brought from Chesterford to Cambridge in carriages of the appellants, the Eastern Counties R. Co. deriving the same benefit from conveying them forward to London. The railway within the respondents' parish is rendered more valuable and productive by something connected with the use of it in another parish, and, according to decided cases, its rateable value within the respondents' parish is thereby enhanced."

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After some further remarks his lordship says,—

"If this branch was let to a tenant, he would be entitled, under the agreement, and the act of Parliament confirming it, to this contingent payment, and no doubt it would enhance the amount of the rent which, as a tenant from year to year, he would be willing to offer. I have only further to observe, in answer to an objection raised, that in my opinion the contention of the respondents does not lead to the double rating of the same profits, for, if the Newmarket Co. were rateable in respect of payment made to them under this agreement, or under an agreement whereby the Eastern Counties Co. undertook to pay them absolutely a certain sum for each passenger brought from Chesterford to Cambridge, the Eastern Counties Co. would be entitled to a deduction in respect of such payment from their gross earnings when the assessable value of *their* railway comes to be estimated. I wish to adhere to the recent as well as the earlier cases on this subject, with this caution, that when we were determining that in rating railways the parochial, not the mileage, principle was to be adopted, the court did not mean to intimate that assessable value of land in one parish ought not to be increased by a profit derived from it by the occupier, as occupier, in consideration of an advantage derived from it in another parish. Upon the whole, my opinion is in favour of the respondents, but there must be judgment for the appellants.

The next case we have to notice, *R. v. South-Eastern R. Co. (n)*, also relates to the rateable value of a portion of a branch line of a railway running from Reading to Reigate, and passing through Dorking, the respondent parish. It appeared that this branch line was originally constructed by the Reading, Guildford and Reigate Co., but, under certain agreements entered into and confirmed by powers contained in their special act, the latter company, in 1850, leased the portion of the line between Dorking and Reigate to the South-Eastern R. Co. for 1,000 years, at a yearly rent of 33,000*l.* and also on condition of the payment of 8,000*l.* per annum, as interest on a debt incurred in making the line. The respondents had, in a rate made whilst the lease was subsisting, assessed the South-Eastern Co. upon a valuation founded upon the rent of 41,000*l.*, payable under the lease; and the case found, that if the rent was the proper criterion of the rateable value, then the assessment appealed against was correct. It was however found, that the gross earnings of the South-Eastern Co. on the Reading, G. and R. line, less the proper deductions, did not in the year for which the rate was made amount to 41,000*l.* less the statutory deductions under the Parochial Assessment Act, and also that the Reading, G. and R. line brought a great

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(n) 23 L. J. (M. C.) 84; 3 E. & B. 491; ante, 586, note (q).

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with main line,
and perpetual
annuity charged
on main line.*

deal of additional traffic to the main line of the South-Eastern Railway, and the latter company thus derived benefit from the Reading, G. and R. line as a feeder to the main line in respect of traffic conveyed upon that line; also that the Reading, G. and R. line, if in the market, might be an object of competition in consequence of the spirit of rivalry existing between the South-Eastern and other companies, the traffic on the main lines of which would be increased by the possession and control of the Reading, G. and R. line.

The case then proceeded to state that, in 1852, an act was obtained, whereby the Reading Co. was dissolved, and their powers transferred to the South-Eastern, and a perpetual annuity of 41,000*l.* was charged upon the whole undertaking of that company, payable to the shareholders in the dissolved company, by way of commutation for the yearly sums payable under the lease of 1850. It also appeared, that another rate was made after the Amalgamation Act, which was also appealed against, and the whole of the facts and circumstances previously stated as to the first-mentioned rate were declared to be applicable as to the last rate, with the exception of the said lease, which was applicable only to the first-mentioned rate. Upon these facts thus briefly stated, but which are to be found detailed at considerable length in the report of the case, three questions were submitted to the court:—*First*, whether the appellants were properly assessed in the two rates appealed against in certain specified amounts, the assessments being founded on the said rent as to the first, and the said annuity as to the second rate, which assessments were taken as the proper criterion of annual value in each case. *Secondly*, whether they were liable to be assessed in respect only of the net profit derived from the traffic passing through Dorking, irrespective of any rent paid by the company, and the value of the Reading, G. and R. line as increasing the traffic on the main line. *Thirdly*, whether the respondents were entitled to take into consideration, in their assessment, the value of the line to the appellants, as an integral part of the South-Eastern Railway, in addition to the net profit as derived from the traffic passing through the parish of Dorking.

*Rent paid is only
presumptive
evidence of the
yearly value.*

The learned judges unanimously agreed, in answer to the *first* question, that the mode adopted of making the rent in one case, and the annuity in the other, the sole criterion for the assessment, could not be supported; the court being of opinion, that rent paid at the time when a rate is made, is only presumptive evidence of annual value, which may be rebutted; and Erle, J., likened the case to an open coal mine being let at a certain rent, and it being proved that the mine had become exhausted; or to an unopened coal mine let at a rent agreed for, on the speculation that it would prove productive—cases in either of which, if nothing was obtained, the rent would be no evidence of rateable value.

On the *second* and *third* questions, the learned judges again differed in opinion; Lord Campbell, C. J., and Coleridge and Crompton, Js., holding, that these questions should be answered—the second in the negative, and the third in the affirmative; Erle, J., *dis-sentiente*.

Lord Campbell, C. J., observed as to the second question,—

“I am opinion that the liability of the appellants cannot be confined to the net profit derived by the appellants from the traffic passing through the parish of Dorking. They are only to be assessed in that parish in respect of property occupied by them in that parish; but its value in the parish may be enhanced by circumstances existing out of the parish. The appellants say truly, that they are not to be rated in this parish for profits made elsewhere. I wish implicitly to abide by what is called the ‘parochial principle’ of rating. But, upon that principle, we must see of what value the property rated in the parish is to the occupiers; and this is not necessarily determined by the pecuniary receipts for the use of it within the parish. The rent that was paid by the appellants is strong evidence that it was of greater value to them, than the mere net profit from the traffic upon it. We have an express admission that ‘the Reading line brings a great deal of additional traffic to the main line, and that they derive benefit from the Reading line as a feeder to the main line in respect of traffic conveyed upon that line;’ and ‘that the Reading line, if in the market, might be an object of competition between the South-Eastern Company and other railway companies, the traffic on the main lines of which would be increased by the possession and control of the Reading line.’ Therefore, plus the net profits derived from the traffic passing through the parish of Dorking, the appellants do derive a profit from the occupation of the portion of the line in that parish. But it is said, that, in respect of this last profit, they ought only to be assessed in the parishes through which the main line passes. I am of a contrary opinion. This profit, although not received for the traffic upon the line in the parish of Dorking, originates from the occupation by the appellants of land in the parish of Dorking; and if they are assessed in that parish in respect of this profit, in estimating their profits in the parishes through which the main line passes, there ought to be a deduction in respect of what is paid for the line, which is worked as a feeder to the main line. This calculation, though difficult, may be made upon the data which are accessible; and is not more difficult than calculations which must be made in railway rating, where stations and inclined planes in one parish affect the traffic in another parish (*o*). Adhering to the parochial principle, I inquire of what value the land rated is to the occupier. Of this value the rent which he is willing to pay affords evidence; and from any profit which he indirectly makes from it out of the parish, part of the rent which he pays for it in the parish is to be regarded as a deduction. At the bar it was hardly denied that this would be the result, if the two railways belonged to different companies, and if the company whose railway is fed were to pay a regular fixed annual sum to the company whose railway is the feeder. But I do not see how it should make any difference to the parish of Dorking, that both lines are occupied by one company, and are worked as one concern. The advantage derived from the occupation of the portion of the line in that parish is still the same, although the process by which the amount of that advantage is to be calculated has changed. I adhere to the rule of rating which is laid down in *R. v. Newmarket R. Co.* (*p*), which I there attempted to support and illustrate. This,

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(*o*) Ante, 581, note (*i*).

(*p*) Ante, 598.

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I think, is in entire harmony with our decision in *R. v. Great Western R. Co.* (q). In many cases, the supposed advantage derived by a railway company from a portion of a railway in a particular parish, bringing passengers and goods to another portion out of the parish, may be almost inappreciable, and I would earnestly dissuade parishes from ever making any claim under this head, unless where, upon clear evidence, the claim can in point of fact be established.

“As to the third question, I say, that the respondents are not entitled to treat the Reading line as an integral part of the South-Eastern Railway, so as to depart from the parochial principle; but they are entitled to consider in the assessment the value of the Reading line to the appellants beyond the traffic passing through the parish of Dorking.”

Coleridge, J., said,—

“I understand the second and third questions to be intended to raise three points:—First, must the assessment be made only on the net profits earned by the passage of goods and passengers over the land occupied in Dorking, and must any additional value which the occupation in truth may have, as increasing the traffic on the main line, be excluded? Secondly, may any additional value which the occupation of the land in Dorking may have, by reason of the amalgamation of the two lines, be included in the assessment? These two questions, I presume, were framed with a view to the different circumstances under which the two rates were made, in respect of the amalgamation. My answer to these questions will be this: nothing is to be excluded which, I do not say has a tendency to add to (for of this no notice can be taken), but which actually adds to the value of the occupation; for the rate is to be regulated in amount by that value; and it is a principle, which I believe to be established by numerous decisions, that the inquiry is not so much where the profits of the occupation are produced, as whether any alleged profits are so directly referable to it as properly to be considered parts of the profits of the occupation, so that, to adopt the words of Mr. Cripps, in his sensible essay on the subject, ‘the rateable value within the parish may depend on matter without the parish.’ I am not aware that this conflicts with any decision. This principle was first laid down and acted upon in regard to railways in *R. v. London and South-Western R. Co.* (r), and, as regards them, that case has been a governing authority ever since, from which I should be very sorry to depart. As I understood the two Tilehurst cases (s), nothing was decided in either that at all breaks in upon it; and I certainly intend to adhere to both of those decisions. The principle, indeed, was well established as early as the *New River case* (t); and I have long considered it as well settled, that we are to apply the same principles to the rating occupiers of railways as of any other property, though the application may be in some respects much more difficult, and the results not always so certainly obtained. I by no means say that either the increase of the traffic on the main line, or the amalgamation of the two lines, is actually to affect the increase of the value of the occupation of the land in Dorking, that is purely a question of fact, with which we have nothing to do; and if, in fact, from either cause such increase takes place, I am not prepared to point out to the parish officers how it is to be ascertained or measured, or how it is to be distinguished from the general profits of the occupation in the parishes on the main line—that again is not within the province of this court. It may well be that such increase may exist, and yet it may be so unimportant or so difficult to ascertain, that, as mathematical accuracy in a rate is never to be expected,

(q) 15 Q. B. 379, ante, 581.

(r) 1 Q. B. 585, ante, 586.

(s) 6 Q. B. 206, ante, 587; 15 Q. B.

1085; ante, 594.

(t) 1 M. & S. 503.

it may be more prudent on the whole for the parish officers not to press it into the calculation. But, subject to the effect of these remarks, which I make the more distinctly because I consider it of great importance for this court always to abstain from expressing opinions on mere matters of fact, and to confine itself to laying down principles in questions of rating—my answer to the second question is this: that the assessment may, and indeed should, be made with respect had both to the rent and to any increased value which the occupation in Dorking may have by increasing the traffic on the main line; and I give the same answer in effect to the third question, that the respondents may and ought to take into consideration the value of the occupation as an integral part of the main line in both cases, as I have already stated, if they can ascertain that the value is increased thereby, and in proportion as they find it increased thereby. It will be observed that in both cases I slightly alter the wording of the questions to what I understand to be the meaning they were intended to convey. It has been objected that these principles, when applied to railways, may lead to double rating, because the same proprietor may be assessed in respect of the same profits in two parishes. I do not understand how the principle of rating can differ where there is one and the same occupier in two parishes, from where there are two or more occupiers. If the occupier be the same, the properties are necessarily different in respect of which he is rated; and, for this purpose, he must be considered a distinct person in each parish in which he occupies. In each the overseers will rate him in respect of the property in their parish; and they will estimate its value by what it produces, not merely there, but any where. If the profits of some other land in his occupation in another parish are mixed up with what the land in their parish produces, that ought to be the ground of a deduction from the assessment, and, if not made, the rate may be excessive in amount. It may be impossible to do this with mathematical accuracy; but to do it is the business of the parish officers in the first instance—of the sessions in the second—but never of this court. If in the case of the New River, the parish officers of Islington should assess the company, looking only to total profits received in their parish, and making no separation of or allowance for the share which was properly referable to Amwell, and rateable there, they would overrate, and an appeal would lie; but this would be no ground for diminishing the rate in Amwell, for the excess in Islington ought to have been appealed against; if it has been, we must presume redress has been afforded; if it has not, the company has acquiesced; either way, the parish officers of Amwell cannot be affected by the course pursued by those of Islington. How can that case be distinguished from this? The land and the water have a rateable value in Amwell, considered merely as such, but it is small; they contribute, however, with the land and water elsewhere, to produce great profits, which are reaped, as it were, in Islington, and they are rated for the amount of this contribution. In Islington there are also land and water, and there the great mass of the profits is ostensibly produced; but the overseers there ought to separate from the portion on which they are to rate, the portions which are really earned in Amwell and the other parishes intervening. So, here, the land in Dorking has, per se, a rateable value; but it is said to contribute to produce, with the other land in the other parishes, great profits at the London terminus of their main line; and the occupier in Dorking has the contribution included in the rate of his land in Dorking, which, therefore, ought not to contribute to the rate in any other parish. Could the exact amount of that contribution be ascertained easily, not a doubt could exist that the rating was on a fair principle; but the difficulty of ascertaining the amount surely can make no difference in the principle. To clear up that difficulty, whatever it may amount to, is not the province of this court, but of an accountant. Under these circumstances, therefore, it will be necessary, in my opinion, to send both

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rates to an arbitrator, to ascertain the proper amount according to the principles I have laid down."

Erle, J., dissentiente.

"In this case, I consider the material facts to be, that one rate was made while the Reading and Reigate Railway was under lease, and the other after it was amalgamated with the South-Eastern Railway; and the material question to be, what is the principle for ascertaining the rateable value of the portion of the line in the parish of Dorking for each rate? the parish contending that the rent of 41,000*l.* at the time of the first rate, and the amount of 41,000*l.* paid since the amalgamation, should be taken as the rateable value of the whole line, to be apportioned among the different parishes; the railway company contending that the net earnings of the portion of the line in the parish should be taken as the rateable value. As the rate since the amalgamation is the most important, being the guide for future rates, I take that first. By the amalgamation the Reading and Reigate line, which was a feeder, has become part of the South-Eastern line, as much as if it formed part of the original construction; so that now either all is line or all is feeder, the amalgamation in this case being in no respect distinguishable from the amalgamation of the Newbury and Hungerford line with the Great Western, *R. v. Great Western R. Co. (u)*. There, the principle for rating a railway by taking the net profit of the whole line as the rateable value of the whole, and by apportioning that rateable value among the parishes in proportion to the net earnings in each parish, was sanctioned and acted upon. This principle was decided to be correct, after long consideration, in *R. v. London and Brighton*; *R. v. South-Eastern*; and *R. v. Midland R. Co. (x)*, and I extract the principle as expressed in each of those cases. In *R. v. Brighton*, the parish of Croydon claimed a right to rate the railway on the principle of parochial earnings, that is, at such a sum as a solvent tenant would pay as annual rent for the stations and portion of the railway within the parish, regard being had to the net revenue earned in the parish; and this principle was affirmed by the court. In *R. v. South-Eastern R. Co.*, the parish of Westbere claimed to rate a company for a portion of the branch to Ramsgate on the mileage principle of dividing the rateable value of the trunk and branches, according to the distance in each parish. It was found that the traffic upon the main or trunk line was greater than upon any of the branches. The company contended for the principle of parochial earnings, viz., that they ought to be rated at such a sum as a tenant might be expected to give as annual rent for that portion of the branch railway situate within the parish of Westbere, regard being had to the portion of profit earned by the portion of the railway within that parish; such rent being ascertained by taking the gross annual receipts from the portion of the railway situate in Westbere, such gross receipts being ascertained by taking a proportion of the fare paid by every passenger who has, during the year, been carried by the company over any portion of the line in Westbere, such proportion bearing the same ratio to the whole sum paid by such passenger, to the whole distance travelled by him, as the distance in Westbere bears to the whole distance travelled by him; and calculating goods on the same principle, and taking from such earnings the deductions allowed by the Parochial Assessment Act:—Held, that this principle of estimating the gross profits was correct, and that deductions were to be made on the parochial principle also. It is said in arguing (*y*)—Here is a parish, including a portion of a branch line, upon which it is found that the profits fall short of those earned on the main line. The

(*u*) 15 Q. B. 1085, ante, 594.

(*x*) Ante, 586, note (*q*).

(*y*) 20 L. J. (M. C.) 140.

profits on which the rate is to be calculated are those arising within the rating parish. The respondent parish has no right to any of the profits earned on the main line. The judgment of the court supports this argument. In *R. v. Midland R. Co.*—the parish of Basford was rated on the mileage principle—the company contended that the rate ought to be estimated by reference solely to the net profits earned by the railway within that parish, without any reference to the net profits earned elsewhere, or to the rateable value of any portion of the railway lying in any other parish; the judgment affirms this principle. In *R. v. Great Western R. Co.* (z), the question was, how the *expenses* of a railway were to be apportioned; and it was held, that they also, where they are local, are to be apportioned to the parish where they arise, and deducted from the gross earnings in that parish, calculated on the principle laid down in the foregoing cases. Nothing more than the gross earnings in the parish were allowed to the parish, although it was found that it was profitable to the company as proprietors of the entire Great Western Railway, by reason of the increased traffic brought thereby upon the main line, and the increased receipts upon that line between the London and Western termini of it. As each parish is held entitled to rate for the earnings therein (as, for example, Croydon, for all that is earned therein), it is clear that none of the other parishes on the line can rate for the tendency of the line situate in them to make the earnings in Croydon. The earning is profit, and if the whole profit in Croydon is rated there, and the tendency to create that profit is rated elsewhere, the same profit would be in effect rated twice, which is unlawful. Also, it is clear that no tendency to create profit is rateable; no tenant would pay rent for a tendency to profit, unless it resulted in profit; and certainly no tenant of the part of the line in Dorking, would pay rent to increase the profit of some other tenant of some other part of the line, as was mentioned in the case of *R. v. Newmarket R. Co.* in this term (a). I have disposed of all that was material in the questions submitted: but, as the judges differ on the question whether a railway can be rated for more than it produces in the parish, on account of its tendency to make profit elsewhere, which is expressed by a metaphor from feeding; and on the question whether, in a case for apportionment, one parish, in making its rate, can disregard the positions of other parishes within the apportionment, and as a generality cannot be tested without a specific application, I suggest, if a case is again brought up relating to these points, it should state specifically what is the railway profit arising out of the parish, which is liable to be rated within it.”

In a case in which a branch, which produced no profit *per se*, but contributed to the profit of the main line, was leased to the main line at a fixed rent; it was held that the main line, as occupier of the branch, was liable to be rated not merely with respect to the earnings of the branch in the parish, but also in respect to its value as bringing profit to the main line (b).

Where a railway company were authorized to levy a particular toll but did not levy it, because if they did, the carriage of goods in respect of which it was leviable would in their opinion be altogether lost, it was held that they were not rateable in respect of those tolls (c).

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London and North-Western R. Co. v. Cannock.

Branch rateable as bringing profit to main line.

R. v. Stockton and Darlington R. Co.

Authorized toll, not charged, not rateable.

(z) 15 Q. B. 379, 1085; 21 Law J. (M. C.) 94. &c. of *Cannock*, 9 Law T. (N. S.) 325 (Nov. 1863).

(a) Ante, 598.

(b) *L. and N. W. R. Co. v. Churchwardens*, (c) *R. v. Stockton and Darlington R. Co.*, 8 Law T. (N. S.) 422 (May, 1863.)

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Rateable value
where passengers
booked through.

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Where, by an arrangement between the N. London R. Co. and the Blackwall R. Co., passengers were booked through and carried from stations on the former to stations on the latter line, the N. L. R. Co. paying over out of the whole fare charged a fixed and reasonable sum to the B. Co. for every passenger so carried, it was held that, in ascertaining the rateable value of a part of the N. L. R. Co.'s line in a particular parish, the aggregate of the sums so paid over to the B. Co. must be thrown altogether out of consideration (*d*).

We have now to consider whether the foregoing decisions do not afford some useful practical rules for rating a railway (*e*).

It having been decided, as we have seen (*f*), that the parochial principle is applicable to railway rating, it is necessary, as a preliminary step, to ascertain the amount of the gross receipts of the company earned in the parish which is about to levy the rate. The company's books will always furnish this information, and upon application being made by the parish officers, it is usual to give every facility for obtaining it (*g*). It may appear to be difficult to ascertain the gross receipts in a particular parish, but as the accounts are usually well kept, and invariably show what the traffic is to and from every station on the railway, a simple sum in arithmetic will work out the problem. Let us suppose, by way of illustration, that the rate is to be made for the parish of *Fairmile*, over which the railway runs for a distance of one mile, there being no station within the parish. Under these circumstances, it is obvious that all the passengers and other traffic which have passed from either of the stations on the railway beyond Fairmile to any other station below it, or *vice versa*, must have gone over the portion of the line situate in Fairmile. The quantities of this traffic, and the charges made in respect of it, must therefore be ascertained, and it is then only necessary to calculate the proportionate part of every fare and other receipts for traffic, which ought to be apportioned to this one mile, and the result shows the amount of the gross earnings in the parish. Nor is the calculation a difficult one. For instance, if the whole railway were fifty miles in length, one fiftieth of every through passenger's fare would represent the portion which was received in respect of Fairmile, and in like manner every other fare which has been received for other than through passengers will be subject to a proportionate division according to the number of miles travelled. And by adopt-

(*d*) *R. v. St. Pancras*, 32 L. J. (M. C.) 146; 3 Best & S. 810.

(*e*) Mr. Cripps, in a valuable pamphlet, entitled "How to Rate a Railway," published by Maxwell, considers this subject at considerable length, and much valuable information is imparted, which has proved of great service in the compilation of the

above remarks. Another able contribution on the difficult subject of "Contributive Value," by Mr. H. Castle, Civil Engineer, published by Maxwell, may also be consulted with advantage.

(*f*) See ante, 580.

(*g*) See ante, 592.

ing a similar calculation for goods traffic, the gross earnings in every parish may be very accurately ascertained.

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Having then ascertained the gross earnings in the parish, we must next consider what deductions ought to be made. One class of these deductions may be conveniently arranged under the nine following heads:—

1. For maintenance of the permanent way.
2. Reproduction of the permanent way.
3. Locomotive and carriage account, viz., coals, coke, repairs to engines and carriages, wages to guards, firemen and drivers, oil, tallow and other incidental expenses.
4. Station and carrying charges, including clerks, porters, watchmen, police porters, clothing, gas, tickets, &c.
5. Direction and office expenses, including payments to directors, superintendents of departments, advertising, printing, stationery, travelling expenses and law charges.
6. Rent of stations, and repairs of stations and buildings.
7. Compensation fund to meet costs of accidents under Lord Campbell's Act, and other casual losses of a like nature.
8. Rates and taxes.
9. Government duty payable on passengers.

These items of allowance need not necessarily be divided into precisely the foregoing heads, for if the mode in which the accounts of the company are kept, or any other circumstance, should render it desirable to classify them in a different order or arrangement, any other plan may be followed, so that the desired result be ultimately attained. Let us then examine each item in some detail.

1. Maintenance of permanent way. This deduction should be the average annual cost incurred in keeping the line of railway in Fair-mile in repair, including the ballasting, fencing, draining and other similar expenses. This item of allowance has been generally ascertained without difficulty. In many cases, it has been ascertained at the quarter sessions that certain districts of the line are maintained under yearly contracts, at a certain specified sum per mile; and in such cases the contract price has been usually adopted. It may undoubtedly happen, in some rare cases, that the cost of keeping a particular portion of the railway in repair is greater than the ordinary and average cost of the line, and in strictness this ought to be taken into account. But as all parts of the line are necessarily used for the passage of the locomotive engines and carriages, both before and after they pass through the parish which enforces the rate; and as every portion of the line is mutually dependent upon the other portions for the creation of the entire earnings, it would probably require strong evidence to induce a Court of Quarter Sessions to

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refuse to adopt a mileage division of the costs of maintaining the way. Any excess of expenditure on a particular part of the line would probably arise rather from the nature of the soil over which it is carried than from any excess of traffic: and on the other hand, if it be clearly shown that the increased expenditure arises from the latter cause, the parish authorities will be entitled to the benefit which arises from the larger amount of the gross receipts; and they may, therefore, in such cases, properly permit an additional allowance to be made for the maintenance of the permanent way.

*Reproduction of
way.*

2. Reproduction of the permanent way. Besides the allowance for the mere actual annual repairs and maintenance of the way, the rule has been laid down in several cases (*h*), that an additional allowance should be made for the renewal and reproduction of the rails, and frame work, or sleepers, of the railway. This seems to be one of that class of deductions falling under the Parochial Assessment Act, which require a deduction from the gross rental in respect of the probable average annual costs of the repairs, and other expenses necessary to maintain the rated hereditament in a state to command the net rental. The facts stated in the decided cases show that, although, by annual repairs and partial renewals, the rails and sleepers of a railway are maintained in an efficient state, the necessity of a fundamental renewal and reproduction will nevertheless arise after a certain number of years. It is therefore proper to ascertain, on a mileage calculation, what sum set aside annually will accumulate to such a fund as will be sufficient to make the renewal when the period arrives, and it is now also firmly established that the company are entitled to make this deduction, although they do not, year by year, actually set aside any sum of money for this purpose. The contest which arises under this head of deduction, usually relates to the number of years which may be expected to elapse before the renewal of the rails and materials will be required. This will obviously vary according to the amount of the traffic, the nature of the soil, and other similar circumstances, and must be treated as a question of fact to be determined by the evidence of competent witnesses.

*Locomotive
charges.*

3. The locomotive account. The annual cost incurred by the various items of expenditure enumerated in the above account (*i*), for the whole line of railway, is readily ascertained when the accounts of a company are properly kept, and then by a simple process, which we shall endeavour to explain, the sum to be deducted in respect of the particular parish may be accurately ascertained. Suppose, for instance, that the total annual cost is found to be 5,000*l*. We proceed then to ascertain the number of miles run by all the locomotive engines during the year, over the whole line of railway, and we find the amount to

(*h*) Ante, 593.

(*i*) Ante, 609.

be 100,000 miles. This being ascertained, a simple sum in arithmetic shows that for every mile run, a cost of one shilling has been incurred, and we come to the conclusion that this is the exact average cost of running a locomotive engine over one mile of railway. We again resort to the books of the company, and find that the locomotive engines passed through Fairmile, our supposed particular parish, on the up or down line, five thousand times during the year. We cannot, therefore, err if we conclude that the deduction for locomotive expenses should be five thousand shillings or 250*l*. But it may be objected that this mode of arriving at the cost of the locomotive power would be erroneous, if the parish of Fairmile happened to be situate on a branch railway, because it is well known that the cost of locomotive power, per mile run, is usually much greater on a branch line than on the trunk. This arises from the circumstance that trains pass over a branch railway less frequently than over the main line, and an engine placed on the former is subjected to long detentions at the junction, waiting to take her journey, whilst during the same period of time an engine on the main line performs a long journey without detention of any kind. The daily cost of two engines thus engaged may be nearly the same, but one may have travelled two hundred miles daily, whilst the other has not performed more than two short journeys on the branch line.

All the cases show that deductions must be made upon the parochial principle, just as the gross profits are ascertained, and it seems at first sight to be reasonable that the deductions should be ascertained on the principle of allowing all charges and expenses arising locally, which are necessary for keeping the subject of the assessment at the value which is made the measure of that assessment(*k*). On the other hand, the parish authorities, on a branch line, may justly say, that it is unfair to adopt the higher rate of expenses, caused by working the branch line, when, (as is generally the case,) the branch is chiefly worked as being a feeder of the traffic to the main line, and here it is without doubt, that the practical difficulty arises, which led to a difference of opinion in the Court of Queen's Bench(*l*). Upon

(*k*) See *R. v. Great Western R. Co.* (second case), ante, 594; *R. v. South Eastern R. Co.*, ante, 601, particularly the remarks made by Erle, J.

(*l*) Much has been said and written upon this subject, but the following remark may dispose of the matter satisfactorily, so far as the facts are concerned. Why does it answer the purpose of a railway company to work a branch line, when the expenses are equal to, or even exceed, the receipts? The answer is obvious. On a main line of railway, trains are running to and from the various termini at a certain cost, and by

means of branch railways, additional traffic is brought to join these trains, without material increase of cost being occasioned on the main line: thus the passenger who contributed nothing to the profits whilst he travelled on the branch line, does contribute to the amount of profits as soon as he is brought to and traverses the main line. Mr. Justice Erle's significant suggestion (ante, 606), that "all is line or all is feeder," would seem to lead to the conclusion that a branch may be conveniently assessed upon the principle laid down in the text.

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that occasion, the decision of the court is, as we have already seen, that if the value of the branch be enhanced by its contributing traffic to other parts of the railway, such increased value may be properly taken into consideration, but it will probably be found, in most instances, that the difficulty of ascertaining this increased value will be so great as to prevent parochial officers from availing themselves of the strict letter of the law. Lord Campbell, C. J., says:—

“In many cases the supposed advantage derived by a railway company from a portion of a railway in a particular parish, bringing passengers and goods to another portion out of the parish, may be almost inappreciable; and I would earnestly dissuade parishes from ever making any claim under this head, unless where upon clear evidence the claim can, in point of fact, be established.”

There is also much force in the remark made by Erle, J., that after an amalgamation of a branch with a main line of railway, all ought to be considered as line, or all as feeder (*m*), and parish officers will probably find it difficult to comply with the request made by the same learned judge, who concluded his judgment by saying:—

“As the judges differ on the question, whether a railway can be rated for more than it produces in the parish, on account of its tendency to make profit elsewhere, which is expressed by a metaphor from feeding, and on the question, whether, in a case for apportionment, one parish in making its rate can disregard the positions of other parishes within the apportionment, and as a generality cannot be tested without a specific application, I suggest, if a case is again brought up relating to these points, it should state specifically what is the railway profit arising out of the parish which is liable to be rated within it.”

Under these circumstances, therefore, we may perhaps safely arrive at the conclusion, that if, by reason of the difficulties which surround the attempt, no such increased value is attempted to be attached to the branch line, in making the assessment, it will be only just to allow the parish officers to make the deductions, in respect of the locomotive power, on its average cost per mile, throughout the whole line of railway, notwithstanding the actual cost on the branch may be considerably higher. And, indeed, the same liberality should be exercised towards the parishes over which such a branch line of railway runs, in making all similar calculations, for as many such lines are worked with little or no profit, it would otherwise follow that they yield no rateable value whatever (*n*).

As a general rule, in making deductions, Lord Campbell's remarks (*o*) may well be adopted. His lordship said:—

“Of these outgoings of a railway, some are general, having no more connexion with or influence on one part of the whole line than on any other, incurred for the sake of the whole line, and contributing to the profits everywhere. Of course these must be distributed, and to every mile must be apportioned some share, on whatever

(*m*) Ante, 606.

(*n*) And see ante, 607.

(*o*) Ante, 595.

principle the apportionment is to be settled. Some, again, seem purely local; a tunnel here, an inclined plane there (we purposely mention striking and definite peculiarities), yet even these are contributing to the earnings everywhere; without these the traffic, on either side, could have no existence. It would be wrong to set these wholly and exclusively against the receipts earned in the same part of the line(o). We need not dwell on this, because in principle some distribution is on all hands agreed to be necessary; the only difficulty is, in determining what is to be adopted for making it justly, a difficulty, we believe, actually insurmountable in fact, if strict mathematical accuracy were insisted on. It is our business, however, only to lay down the general rule, and, in applying it, much must be left not only to the experience and acuteness, but also to the good sense and good faith and candour of the parties concerned, whose interests will be found in the end to be best consulted by this mode of dealing."

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4. Station and carrying charges. Under this head of deduction, the items of expenditure are embraced, which we have already adverted to (p). It needs no argument to show that all the stations on a line of railway contribute, in some degree, to the realizing of the earnings acquired in every parish on the line. These stations must be maintained with a sufficient staff of officers and servants for the general purposes of the undertaking, and the charges for passengers and other traffic are made in respect of the accommodation furnished at the stations, as well as for the transit on the line. How then is this deduction to be apportioned to a particular parish? This will clearly appear if we imagine that there are only two stations on the railway, one at each terminus, and that Fairmile, having no station, is situate in the centre of the line. All the traffic which passes through that parish would, under such circumstances, be taken up and put down at one of these termini, and it is evident that the cost of maintaining the two stations would be properly ascertained by an equal mileage division, calculated in respect of the whole line. Thus, if the annual cost of each station be 1,000*l.*, and the whole line be fifty miles in length, the deduction on a mileage calculation would be at the rate of 40*l.* per mile. So far, this appears to be a simple mode of apportioning the cost of the stations; but it will be necessary to extend our inquiries to a more complicated state of circumstances, for there are usually many stations placed on the line of a railway, some of them first class stations, maintained at a great expense, and the others of a subordinate description. In such cases, we have still to carry out the principle already indicated. In the simple case, the stations con-

Station and carrying charges.

(o) And see ante, 581, note (i).

(p) Ante, 609. And see also *R. v. North Staffordshire R. Co.*, post, 617. "Terminals," i. e., certain allowances which (where the clearing house system is in force) are made to a company owning a station by way of remuneration for the accommodation afforded in receiving, loading and unloading, despatching and delivering, goods either

taken in or given out at the station, are general earnings; and the expenses incurred in earning them are general expenses of the line, and are to be treated in the same way as any other part of the gross receipts and outgoings. *R. v. Eastern Counties R. Co.*, 4 Best & S. 58; 32 L. J. (M. C.) 174.

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tribute to the accommodation of the transit over Fairmile, equally with every other part of the line, and an equal mileage division is made. In the more complex state of circumstances, they may and usually do contribute, unequally, to the convenience of the transit over various parts of the line, and therefore it becomes necessary to ascertain the extent of the accommodation afforded by each station to Fairmile. Nor is this a difficult task. It is only necessary to ascertain the expenses of maintaining each station; then to find out the gross receipts in respect of the traffic using each station; and as the previous inquiry made, as we have already shown, to ascertain the gross receipts in Fairmile, will have furnished information showing what stations have been used for the purposes of the Fairmile traffic, it is presumed that a skilled accountant can arrive at a very near approximation of the proper deductions under this head. It may, perhaps, assist our inquiries, if we notice at this place that the expense attending a stationary engine, or any other similarly extraordinary expenditure at any point of the line of railway should be apportioned upon precisely the same principle as the station expenses. The total cost of maintaining the engine being first ascertained, it should be divided over those parts of the line whose traffic it maintains, in proportions depending upon the quantity of traffic in every parish which has been so maintained.

Direction and
office expenses.

5. Direction(*q*) and office expenses. These are usually apportioned upon a mileage calculation over the whole railway, and although in some extreme cases this may be open to objection, especially with regard to law charges, it will probably be found to be a sufficient approximation to accuracy to make the deduction upon that principle.

Rent of stations.

6. In all the cases the rent of the stations(*r*) have been allowed as a separate item of deduction, with the approval of the Court of Queen's Bench.

Compensation
fund.

7. Compensation fund. This is a deduction the company are clearly entitled to make, and it is usually made in the same proportions as the direction and office expenses.

Rates and taxes.

8 and 9. Rates, taxes, and government duty. These are also deductions upon which no questions are likely to arise. Income tax which a tenant would have to pay on his net profits after payment of rent is not an allowable deduction(*s*).

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When all the above-mentioned deductions have been made from the gross receipts, the sum which remains does not represent the true

(*q*) That a personal remuneration to directors is an allowable deduction, see *R. v. Southampton Dock Co.*, 14 Q. B. 587.

(*r*) As to the proper mode of valuing

stations, see ante, p. 591, note (*c*).

(*s*) *R. v. Southampton Dock Co.*, 14 Q. B. 587.

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rateable value of the railway, because no allowance has yet been made in respect of the capital which a tenant must invest for the purpose of working the line of railway. Locomotive engines of an expensive description, numerous carriages, waggons and trucks, and much valuable machinery, must be purchased for the purposes of the undertaking, and some amount of ready money must also be kept as a floating balance for carrying on the trade of a carrier. There is not much practical difficulty in ascertaining the quantity of rolling and other stock which is required for the proper working of a railway. It depends of course upon the amount of the traffic, the number of the branches, and other local circumstances peculiar to the line, and it is not usually left as a matter of speculation, because the existing stock affords a good test of the quantity actually required. Again we meet with the difficulty suggested by drawing the distinction between branch and main line, and, for the reasons already mentioned, we presume that a comparatively smaller quantity of rolling stock should be assigned to a branch line, than that which is assumed to be necessary for working the main line of the railway, where the chief traffic is attracted. Having then ascertained the quantity of stock which is necessary, the proper course seems to be to ascertain what amount of capital would be required to purchase or provide it, at the time the rate is made. The original cost price of it would probably be too high a calculation, because it would probably be depreciated in value since it was placed on the line. The profits must, therefore, be calculated on the actual value of the stock, for it cannot reasonably be supposed that if the company were about to give up the undertaking, they would not be willing to part with their stock at its actual value, or that if they refused to do so, the incoming tenant could not procure other stock of an equally efficient character at its real value to supply the deficiency (*t*). The necessary capital required for the purposes we have enumerated being thus ascertained, and a fair proportion assigned to Fairmile, the ordinary course is to allow five per cent. for ordinary interest of the money, and then to allow a certain undefinable percentage, to represent tenants' profits. This allowance has ranged in different cases from ten to thirty per cent. on the required capital. A further allowance for the annual depreciation of stock, after ordinary repairs have been allowed for, is also usually made. This varies from five to twelve-and-a-half per cent. according to the circumstances of each particular case, or the peculiar opinion entertained by justices. It is, however, perfectly obvious that the three last-mentioned items of allowance resolve themselves under one general head, and it would probably be the most just and equitable course to treat the interest of capital, the profits of trade, (acquired in

(*t*) Per Cockburn, C. J., in *R. v. North Staffordshire R. Co.*, post.

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great part by the use of personal chattels,) and the allowance in respect of the depreciation of stock, under one general allowance, which ought to be ample and sufficient, so that the residue should fairly represent the value of the land alone (*u*) on which the railway has been constructed.

In *R. v. North Staffordshire R. Co.* (*x*), which may conveniently be noticed here, four questions arose :—*First*, whether the percentage amount to be allowed for interest on capital and tenants' profits is to be calculated upon the capital invested in the rolling stock taken at its *cost price*, or upon the depreciated value of the rolling stock as estimated at the time when the rates were made, or at any other time. *Secondly*, whether the company were entitled to a deduction for interest on capital and tenants' profits upon a sum of 52,950*l.*, an additional amount of capital invested in turntables, cranes, weighing-machines, stationary steam-engines, lathes, electric telegraph and apparatus, office and station furniture, and gasworks, or upon any and what portion of such items; and if so, whether upon the sums originally invested in the said plant, or upon the depreciated value of the same estimated at the time the rates were made, or at any other time; or how otherwise a deduction, if any, should be made in respect of the last-mentioned plant, or any part thereof. *Thirdly*, whether the company were entitled to a further reduction for interest and tenants' profits, or either, upon the said floating capital: and *Fourthly*, whether the deduction to be allowed in respect of the stations, buildings and sidings along the line of railway ought to be ascertained, by taking the rateable value at which the same were assessed to the relief of the poor, or by allowing 6*l.* per cent. upon the original cost of construction, as contended for by the company, or how otherwise a reduction should be made in respect of the said stations, buildings and sidings. In delivering the judgment of the Court of Queen's Bench, Cockburn, C. J., said they were of opinion upon the first point that the allowance must be made with reference to the *actual* and not to the original value; the point having already been decided in *R. v. Great Western R. Co.* (*y*), in which decision they concurred. And his lordship proceeded :—

“ In addition to the reasons given in the judgment of the court in that case, it may be observed, that, as under the Parochial Assessment Act tenants' profits upon stock must necessarily be calculated with a view to their deduction from the gross earnings, in order to ascertain what a tenant would give for the entire property, nothing could be more inconvenient than that a different principle should prevail in calculating the profits in the two cases.

“ Now the question, when considered under the Parochial Assessment Act, must be looked at, not with reference to the railway company, who may have expended

(*u*) See ante, 584, note (*n*).
(*x*) 30 L. J. (M. C.) 68.

(*y*) 6 Q. B. 179, ante, 587.

on the purchase of the stock a much larger sum than such stock would now realise, but with reference to an incoming tenant, and the amount of capital which such tenant would have to lay out in the purchase of the rolling stock necessary to carry on the undertaking. It is obvious that what it would be worth the while of a person or company about to embark in a commercial undertaking to give as rent for the premises in which it was to be carried on, would depend on the amount to be deducted, in addition to repairs and other necessary outgoings, from the gross earnings in respect of the profits due to the capital to be employed in the concern. But it is plain, that a tenant would calculate such profits on the amount of capital actually required to be expended on the stock, not on what may have been the value of such stock at some other time, or in other hands. Now it must be assumed that the stock, in its existing condition, is sufficiently effective to produce the earnings which, after the necessary deductions, constitute the improved value of the railway; and it cannot reasonably be supposed that if the company were about to give up the undertaking, they would not be willing to part with their stock at its actual value, or that, if they refused to do so, the incoming tenant could not procure other stock of an equally efficient character at its real value to supply the deficiency. In estimating, therefore, under the 6 & 7 Will. 4, c. 96, what a tenant would pay, the profits must be calculated on the actual value of the stock. It cannot be supposed that, in exempting profits under 3 & 4 Vict. c. 80, a different principle of calculation was intended to be acted on.

“The *second* question is, whether the company are entitled to a deduction in respect of various articles therein specified, being things necessary for carrying on the business of the company. The articles to which such a question may have reference may be divided into three classes: first, things moveable, such as office and station furniture; secondly, things so attached to the freehold as to become part of it; and thirdly, things which, though capable of being removed, are yet so far attached as that it is intended they shall remain permanently connected with the railway or the premises used with it, and remain permanent appendages to it as essential to its working. It is clear that, in respect of the first class of articles, a deduction should be allowed. It is equally clear that no deduction should be allowed as to the second. As to the third, the question is finally settled by the decision of this court in *R. v. Southampton Dock Co.* (z).

“The *third* question, whether the company are entitled to a deduction in respect to the floating capital therein referred to, is one of considerable nicety, and which, as it appears to us, must depend on whether on the whole capital employed a greater delay occurs in realizing the returns than is ordinarily incidental to the employment of capital. No doubt, as the rent which the imaginary tenant contemplated by the Parochial Assessment Act could afford to pay, would be the difference between the gross earnings (after the necessary deductions) and the amount of profits due (reference being had to the nature of the undertaking) on the capital employed, whatever tends to diminish such profits must go, *pro tanto*, to diminish the rent. Any delay in realizing the profits beyond such as is generally incidental to the ordinary employment of capital, may therefore (as it must be presumed that it would be taken into account by the tenant) be fairly taken into account on de-

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(z) That no deduction should be allowed: 14 Q. B. 587. Lord Campbell, C. J., in that case said:—“This is a rate upon *buildings* to which machinery is attached for the purposes of trade, and it has been solemnly decided that such real property ought to be assessed according to its existing value as combined with the machinery, without considering

whether the machinery be real or personal property, or whether it be liable or not to distress or seizure under a fi. fa., or whether it would go to the heir or executor, or at the expiration of a lease to the landlord or tenant. *R. v. Birmingham and Staffordshire Gas Co.*, 6 A. & E. 634; *R. v. Guest*, 7 A. & E. 951.

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termining the rateable value. On the other hand, it must be observed, that, as a very large proportion of the earnings of a railway company is of a ready money character, it may well be that when the whole of the capital and of the earnings are taken into account, the profits on the whole capital may be realized in a shorter time in this species of undertaking than on the average of commercial enterprises. If this should be the case, the delay in realizing the profits which might arise as to a part of the capital might well be considered to be compensated by the more than ordinary quickness of the return on the rest. We have no means before us of determining the question with reference to this view of the case. We can do no more than point out the principle by which we think it must be determined.

"As regards the *fourth* question, we are of opinion that the deduction to be allowed in respect of stations, buildings and sidings must be calculated on the actual value at which they ought to be assessed, and not on the original cost of construction."

We thus conclude our remarks on a subject which has been often discussed before many able judges by the most distinguished advocates, and as these eminent persons have candidly acknowledged that this branch of the law is surrounded by difficulties in application, all but insurmountable, the writer would shelter himself from severe criticism if he has failed to impart clear and perspicuous directions for rating a railway (a).

(a) The following remarks on some other points connected with this subject may be found useful. First, as to appeals:—An appeal against a poor-rate, on the ground of inequality of rating, may be made either to the special sessions appointed by the justices under 6 & 7 Will. 4, c. 96, s. 6, or under 43 Eliz. c. 2, to the *next* general quarter sessions, which means the next practicable sessions after the rate was made. At some courts of quarter sessions, it is the practice to allow appeals against rates to be entered and respited, although there had been ample time to give notice of appeal, so as to try at the first sessions. But as the court of quarter sessions may, if they think fit, refuse, under such circumstances, to allow an appeal to be entered and respited, it is always desirable to give the notice for the next practicable sessions, unless some agreement to respite the appeal be made with the respondents. If, however, the sessions allow an appeal to be entered and respited, they cannot afterwards refuse to hear it. *R. v. Justices of Wilts*, 8 B. & C. 380. The stat. 17 Geo. 2, c. 38, s. 4, requires that reasonable notice of appeal shall be given to the parish officers; and, by the rules of the various quarter sessions, the length of this notice was formerly specified. But now, by 12 & 13 Vict. c. 45, s. 1, fourteen clear days' notice at least must be given, and the grounds of appeal must be specified in every notice. The statute 41 Geo. 3, c. 23, s. 4, requires that the notice of appeal "shall be in writing, and shall be signed by

the person or persons giving the same, or his, her or their attorney, on his, her or their behalf; and such notice of appeal shall be delivered to, or left at the place of abode of, the churchwardens and overseers of the poor of the parish, township, vill or place, or any two of them; and the particular causes or grounds of appeal shall be stated and specified in such notice." (See *R. v. Eyre*, 26 Law J. (M. C.) 14, 121, 125.) And, by sect. 6, "If any person or persons shall appeal against any rate or assessment made for the relief of the poor, because any other person or persons is or are rated or assessed in such rate or assessment, or is or are omitted to be rated or assessed therein, or because any other person or persons is or are rated or assessed in any such rate or assessment at any greater or less sum or sums of money than the sum or sums at which he, she or they ought to be rated or assessed therein, or for any other cause that may require any alteration to be made in such rate or assessment, with respect to any other person or persons, then and in every such case the person or persons so appealing for the causes aforesaid, or any of them, shall give such notice of appeal in writing, as hereinbefore mentioned, not only to the churchwardens or overseers of the poor, or any two or more of them, but also to the other person or persons so interested or concerned in the event of such appeal as aforesaid." Care must be taken to prepare the grounds of appeal in a proper form, as no objections can be taken which are not therein specified. See

R. v. Brooke, 9 B. & C. 915; and 12 & 13 Vict. c. 45, s. 1; and see sections 5 and 6 as to the costs of appeals. If a rate is appealed against, the parish officers may support it, without calling the vestry together. *R. v. Street*, 22 L. J. (M. C.) 29.

Some difficulties have been suggested with respect to the proper mode by which railway companies, who are usually principal ratepayers in a parish, can exercise their right to vote at meetings of the vestry. When the vestry is held under 58 Geo. 3, c. 69, the 59 Geo. 3, c. 85, s. 2, provides as follows:—"That in all cases where any corporation or body politic or corporate or company shall be charged to the rate for the relief of the poor of such parish, either in the name of such corporation or of any officer of the said corporation, it shall and may be lawful for the clerk, secretary, steward or other agent duly authorized for that purpose, of such corporation or body politic or corporate or company, to be present at any vestry to be holden in the said parish under the said recited act; and such clerk, secretary, steward or agent shall be entitled to give such and so many vote or votes at such vestry, in respect of the amount of the rent, profit or value of such lands, tenements or hereditaments, as by the said act any inhabitant assessed to such rate present at such vestry might or ought to have and be entitled to in respect of such amount, anything in the said recited act to the contrary in anywise notwithstanding." In cases which do not fall within this act (and the observation is applicable to cases where a corporation is required to enter into a recognizance for any purpose), the proper course seems to be to appoint an attorney, under the seal of the corporation, to do the desired act, whether it be to vote or to enter into a recognizance.

A rate may be levied by distress; but, in the absence of this and every other remedy, a mandamus would perhaps lie. See *R. v. Margate Pier Co.*, 3 B. & Ald. 220. If the company become possessed of any lands liable to be assessed to the poor-rate, they are from time to time, until the works shall be completed and assessed to the poor-rate, liable to make good the deficiency in the several assessments, by reason of such lands having been taken or used for the purposes of the works; and such deficiency must be computed according to the rental at which such lands, with any buildings thereon, were valued or rated at the time of the passing of the special act; and such deficiencies are made payable on demand. 8 & 9 Vict. c. 18, s. 133, post, App. 70.

And the company are required every year to cause an annual account, in abstract, to be prepared, showing the total receipts and expenditure of all funds levied by virtue of that or the special act, for the year ending 31st December, or some other convenient day in each year, under certain specified heads, and duly audited and certified: and

the company must, if required, transmit a copy of the account to the overseers of the poor of the several parishes through which the railway shall pass; and for neglecting to prepare or transmit such account, if required so to do, the company are liable to pay a penalty. 8 & 9 Vict. c. 20, s. 107, post, App. 93.

With respect to the liability of a company to pay local rates, it appeared in a decided case that they had built bridges over their line of railway, upon land conveyed to them in fee, but with a reservation of the use of the bridges. There were walls on each side of the bridges. The commissioners for paving, &c., paved the road over the bridges, and it was decided that the company were liable to be rated for the walls on the sides of the bridges under 57 Geo. 3, c. 29, s. 3, the walls of the bridge being "dead walls" within the meaning of the act. Also, by Jervis, C. J., that they were liable under the words "void spaces," and by Maule, J., that they were liable for them as "public buildings." *Arnell v. L. and N. W. R. Co.*, 20 L. J. (C. P.) 80; 12 C. B. 697. See *Same v. Regent's Canal Co.*, 14 C. B. 564. In some acts of parliament, lands authorized to be taken for public works are altogether exempted from contributing to the poor-rate, or are required to be assessed in a certain prescribed mode. See *R. v. Bristol Dock Co.*, 1 Q. B. 535; *R. v. Monmouthshire Canal Co.*, 3 A. & E. 619; *Todd v. London and South-Western R. Co.*, 7 M. & Gr. 366. Any objection to the rate on the ground of exemption must be taken by appeal to the quarter sessions, and not by action. *Mersey Docks and Harbour Board v. Jones*, 30 L. J. (M. C.) 185, 239. An important decision may be here mentioned on the construction of the Health of Towns Act, 11 & 12 Vict. c. 63. Sect. 88 of that statute, after making all property liable to be rated, for the purposes of the act, on its net annual value, contains the following exemption: "Provided that the occupier of any land used as arable, meadow or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-paths for the same, or as a railway constructed under the powers of any act of Parliament for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof." Held, that this exemption applies only to the line of the railway, including the sidings, turntables, and necessary platform or landing place for the use of the traffic; but that it does not extend to stations, warehouses, buildings, &c., ancillary to and necessary for the working of the railway. *South Wales R. Co. v. Swansea Local Board of Health*, 4 E. & B. 189; 24 L. J. (M. C.) 30. By the Local Government Act, 1858, 21 & 22 Vict. c. 98, "the occupier of any land used only as a railway constructed under the powers

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respect of Capital
and Profits.*

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of any act of Parliament for public conveyance," is to be assessed to the district rate at one-fourth only of the net annual value as ascertained by the last poor-rate. It was held by the Court of Queen's Bench that a railway which had been constructed by a dock company in connexion with their docks, and joining a public railway and

canal, under the powers of their private act, by which the company were bound to complete the railway for the use of the public on the payment of tolls, was a railway within the provision, although it was not constructed to carry passengers. *R. v. Newport Dock Co.*, 31 L.J. (M.C.) 266.

PART V.

ON THE DISSOLUTION OF RAILWAY COMPANIES, AND THE RIGHTS OF ALLOTTEES TO RECOVER THEIR DEPOSITS.

A RAILWAY company, acting under a special act of Parliament, is constituted a body corporate, and can only be dissolved by force of an act of Parliament. Companies provisionally formed were frequently dissolved during the period which elapsed whilst our great railway system was in the course of its formation, and separate treatises were published (*a*) on a subject which interested a numerous class of unfortunate speculators. It would, however, be foreign to the purposes of this Work to treat on these bygone matters; and it is sufficient to show briefly the state of the statute law with respect to the dissolution of railway companies in general. Provisions for this object were first inserted in 7 & 8 Vict. c. 111 (*b*), and it would seem that a railway company might have been dissolved under that statute (*c*). It is well known, however, that the many deficiencies in that act rendered it practically inoperative, and this led to the introduction of Lord Dalhousie's Act, 9 & 10 Vict. c. 28, which provided for the dissolution of unincorporated companies whose subscription had been entered into previously to the 3rd of July, 1846. The two next Winding-up Acts, 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108 (which together with Lord Dalhousie's Act were repealed by the Companies Act, 1862 (*d*)), although they embraced unincorporated railway companies (*c*), did not originally apply to railway companies incorporated by act of Parliament, such companies being expressly excepted from their operation (*f*); but, by a subsequent statute, 13 & 14 Vict. c. 83, intituled "The Abandonment of Rail-

(*a*) See Farrer on the Winding-up Acts. The leading cases are *Hutton v. Upfill*, 2 H. L. C. 674; *Bright v. Hutton*, 3 H. L. C. 341; 16 Jur. 695. The latter case decided the long agitated question as to the extent of the liabilities of provisional committee-men to pay debts due from a company provisionally formed. In that case the defendant was a member of the provisional committee of a projected railway company, which had been provisionally registered, and the affairs of which were put under the authority of a managing committee. He accepted shares and paid a deposit on them, but did no further act. The scheme was abandoned, and it was decided in the House of Lords (after the

judges had been consulted), that on these facts he was not liable to a creditor, for business done under the orders of the managing committee, towards completing the projected undertaking, and converting the association into a regular company, and that consequently he was not liable as a contributory under the Winding-up Acts.

(*b*) Now repealed, 25 & 26 Vict. c. 89.

(*c*) *Bright v. Hutton*, *ubi supra*.

(*d*) 25 & 26 Vict. c. 89, post, App.

(*f*) 12 & 13 Vict. c. 108, s. 1. The subsequent act, 13 & 14 Vict. c. 83, s. 30, post, App. 124, extended these acts to incorporated railway companies, if an order for winding up their affairs had been made previously to 1st of August, 1849.

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panies.*

ways Act, 1850" (*g*), the Board of Trade may, as we have already seen (*h*), in certain cases, authorize the abandonment of a railway authorized to be made by act of Parliament passed before 14th August, 1850, by issuing a warrant, and then, by sect. 31, it is enacted, "that where any such warrant as aforesaid shall have been granted for the abandonment of the whole railway of any railway company, in England or Ireland, any shareholder of such company may present a petition under the Joint-Stock Companies Winding-up Act, 1848, or any act for the amendment of such act (*i*), for the winding-up of the affairs of such company under the said act, and for that purpose the railway company, whose railway is so authorized to be abandoned, shall, if the court shall think fit so to order, (notwithstanding anything to the contrary thereof in the said Joint-Stock Companies Winding-up Act, or in the Joint-Stock Companies Winding-up Amendment Act, 1849,) be deemed to be a company to which the said act applies."

*Rights of allot-
tees to recover
deposits.*

We may conclude this chapter by making a few remarks on the rights of subscribers or allottees of shares (*k*) to recover back their deposits on the failure of a proposed railway scheme. It is obvious that after a railway company is formed, it is absolutely necessary to incur large expenses, for the purpose of applying to Parliament for a special act, inasmuch as engineers must be employed to make surveys of the proposed line of railway, and plans, sections and books of reference must be prepared, and notices given, in compliance with the Standing Orders in Parliament. In addition to these and similar expenses, an unsuccessful application for a special act entails the heavy charges which always accompany a struggle before a committee in Parliament.

When, then, are the allottees of shares, who have paid deposits for

(*g*) Post, App. 119. This act was not repealed by the Companies Act, 1862, which (sect. 199) expressly excepts railway companies incorporated by act of Parliament from the operation of that part of the act (Part VIII.) which applies to the winding-up of unregistered companies.

(*h*) Ante, 450.

(*i*) The Companies Act, 1862, which repealed the Winding-up Act, 1848, can hardly be considered an act for the amendment of the Winding-up Act, 1848; and it may therefore be well doubted whether a shareholder of a railway company could present a petition under Part IV. of the Companies Act, 1862, for the winding-up of the company. The Winding-up Act, 1848, would seem to be kept alive for the purposes of "The Abandonment of Railways Act, 1850."

(*k*) We have already considered in what cases allottees are liable to pay preliminary expenses, ante, 92. Where a plaintiff

brought an action for money had and received to recover back his deposits, and the defendants pleaded that the affairs of the company had been wound up under 9 & 10 Vict. c. 28, it was held that the plea was bad, as it amounted to non-assumpsit. *Owen v. Challis*, 5 D. & L. 802; S. C., 6 C. B. 115; S. P., *Coupland v. Challis*, 2 Exch. 682. Nor is such a plea a bar to an action brought against the company by a creditor. *McKenzie v. Sligo and Shannon R. Co.*, 18 Q. B. 802; 21 L. J. (Q. B.) 380. How far bankruptcy dissolves the bankrupt's connexion with a company, if calls are subsequently made, see *Ex parte Greenshields*, 16 Jur. 517; 21 L. J. (Ch.) 773; *Ex parte Stone*, 14 Jur. 965; *Ex parte Kuper*, 3 De G. & Sm. 113; *South Staffordshire R. Co. v. Burnside*, 20 L. J. (Exch.) 120; 5 Exch. 129; *Wylans Steam Fuel Co. v. Street*, 10 Exch. 849; *Graham v. Van Dieman's Land Co.*, 26 L. J. (Exch.) 73.

scrip or shares in a proposed railway undertaking, entitled to recover back the amount of their deposits? One main point to be attended to is, to ascertain the contents of the prospectuses and letters of allotment which were issued by the promoters of the undertaking; because these documents form the basis of the contract which is entered into when the deposits are paid. Thus, if the prospectus announces a capital of 500,000*l.*, divided into 10,000 shares of 50*l.* each, and a party applies for a certain number of shares, and they are allotted to him, and he pays the deposit,—in this case, if the managers of the company, who receive the deposit, proceed with the undertaking and incur expenses, without having allotted the whole number of 10,000 shares, the allottee would be entitled to recover back the whole amount of his deposit. Thus, in *Nockells v. Crosby* (l), where a scheme for establishing a tontine was put forth, stating that the money subscribed was to be laid out at interest, and, after some subscriptions had been paid to the director, in whom the management of the concern was vested, but before any part of the money was laid out at interest, the directors resolved to abandon the project, it was decided that each subscriber might, in an action for money had and received, recover the whole of the money advanced by him, without the deduction of any part towards the payment of the expenses incurred. And in *Pitchford v. Davis* (m), *Fox v. Clifton* (n), *Bourne v. Freeth* (o), and other cases, the principle above laid down was fully recognized, and the same doctrine has been applied to railway companies in the well known case of *Walstab v. Spottiswoode* (p).

In like manner, where it was proved that the plaintiff had been induced to sign the subscribers' agreement, under circumstances which amounted to fraud in the defendants, the plaintiff recovered his deposit (q).

Care should therefore be taken, that the prospectus does not state with more confidence than the facts justify, that the plans are ready to be deposited, and that all notices have been duly given, so as to entitle the parties to apply for and obtain an act in the *next* session of Parliament; because, if it should turn out that these statements are not correct in fact, it may become a question whether an allottee,

(l) 3 B. & C. 814. As to how far a promoter is liable to an action for damages for deceitful representations in the prospectus, see *Gerhard v. Bates*, 2 E. & B. 476. See also *Clarke v. Dickson*, 28 L. J. (C. P.) 225, and cases cited, ante, 110, note (y).

(m) 5 M. & W. 2.

(n) 6 Bing. 777.

(o) 9 B. & C. 632. See also the valuable remarks made by Sir J. Romilly, M. R., in *Jennings v. Broughton*, 22 L. J. (Ch.) 585.

(p) 4 Railw. C. 321; 10 Jur. 498; 15 M. & W. 501. See also *Galvanized Iron Co. v. Westerby*, 16 Jur. 892; 21 L. J. (Exch.) 302; *Ashpitel v. Sercombe*, 5 Exch.

147; *Chaplin v. Clarke*, 4 Exch. 403; *Wontner v. Shairp*, 2 Car. & K. 273; 4 C. B. 404; 4 Railw. C. 542; *Jarrett v. Kennedy*, 6 C. B. 319.

(q) *Jarrett v. Kennedy*, 6 C. B. 319; *Watts v. Salter*, 20 L. J. (C. B.) 43. Where certain directors subscribed for a large number of shares and paid deposits thereon, they were not allowed to treat these sums as loans advanced by them to pass the Standing Orders of the House of Commons, because this, in a legal sense, was direct fraud on Parliament. Per Kindersley, V. C., *Clements v. Bowes*, 22 L. J. (Ch.) 1022.

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or holder of scrip, may not recover his money back from the managing directors, on the ground that there has been a total failure of consideration.

But in the absence of fraud, and if the allottee has executed the subscribers' agreement(*r*), or if he has placed himself in the same situation as if he had actually signed the document(*s*), then he is placed in very different circumstances, as to his right to recover back the deposits.

Jones v. Harrison.

Thus, where it appeared that the shares had been allotted to the allottee upon the terms of the following letter of allotment:—"The directors assume the right to carry out their intentions by the adoption of all such measures as they may deem requisite for obtaining the necessary parliamentary powers to form a company for the construction of the entire railway, or any part of it, with such branches, extensions or alterations as they may find expedient, and to apply the amount paid for deposits in discharge of any liabilities incurred by them under the general powers vested in them for the prosecution of the undertaking. A subscribers' agreement and parliamentary contract, in such form, and with such provisions as the committee may think necessary, will be prepared and lie at the company's offices for signature, from &c., both inclusive:" it was ruled, that the directors had authority to lay out the deposits in such necessary expenses as had been incurred by them in the prosecution of the scheme; and, it appearing that all the deposits had been so expended, the plaintiff was nonsuited(*t*). And where the letter of allotment merely stated that a call for only 10s. per share would be made, "the directors considering it unnecessary to lock up the large sum of money over and above what any expenses could require," it was decided that the case fell within the principle established in *Jones v. Harrison*, and that the money was deposited for a specific object, *i. e.* the payment of the expenses, which meant the preliminary expenses(*u*).

Willey v. Parratt.

Mowatt v. Lord Londesborough.

But where, by a circular letter, the promoters of a company stated that, in the event of the bill not being obtained, the whole of the deposits would be returned without deduction, it was ruled that an allottee of shares was entitled to recover back the deposits on the failure of this condition, although he had subsequently executed the subscribers' contract, which authorized the directors to reimburse themselves for preliminary expenses out of the deposits(*x*).

(*r*) *Atkinson v. Pocock*, 1 Exch. 796; *Garwood v. Ede*, 1 Exch. 264; 5 Railw. C. 134.

(*s*) *Clements v. Todd*, 1 Exch. 268; 5 Railw. C. 132; *Watts v. Salter*, 10 C. B. 477; 20 L. J. (C. P.) 43; *Vane v. Cobbold*, 1 Exch. 798.

(*t*) *Jones v. Harrison*, 2 Exch. 52; 5

Railw. C. 138.

(*u*) *Willey v. Parratt*, 3 Exch. 211.

(*x*) *Mowatt v. Lord Londesborough*, 3 El. & Bl. 307; 23 L. J. (Q. B.) 177; 4 E. & B. 1. See also *Ex parte Lord Londesborough*, 22 L. J. (Ch.) 736; *Ward v. Lord Londesborough*, 12 C. B. 252; *Ex parte Mowatt*, 22 L. J. (Ch.) 578; 1 Drew. 247.

APPENDIX.

THE STATUTES RELATING TO RAILWAYS.

NOTE.—*The repealed portions of these Statutes are printed in Italics.*

7 WILL. IV. & 1 VICT. CAP. 83.

An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament (a).

[17th July, 1837.]

WHEREAS the Houses of Parliament are in the habit of requiring that, previous to the introduction of any bill into Parliament for making certain bridges, turnpike-roads, cuts, canals, reservoirs, aqueducts, waterworks, navigations, tunnels, archways, railways, piers, ports, harbours, ferries, docks and other works, to be made under the authority of Parliament, certain maps or plans and sections, and books and writings, or extracts or copies of or from certain maps, plans or sections, books and writings, shall be deposited in the office of the clerk of the peace for every county, riding or division in England or Ireland, or in the office of the sheriff clerk of every county in Scotland, in which such work is proposed to be made, and also with the parish clerk in every parish in England, the schoolmaster of every parish of Scotland, or in royal burghs with the town clerk, and the post-master of the post-town in or nearest to every parish in Ireland, in which such work is intended to be made, and with other persons; and whereas it is expedient that such maps, plans, sections, books, writings, and copies or extracts of and from the same, should be received by the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons, and should remain in their custody for the purposes hereinafter mentioned; be it therefore enacted, That whenever either of the houses of Parliament shall by its standing orders already made or hereafter to be made, require that any such maps, plans, sections, books or writings, or extracts or copies of the same, or any of them, shall be deposited as aforesaid, such maps, plans, sections, books, writings, copies and extracts shall be received by and shall remain with the clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters and other persons with whom the same shall be directed by such standing orders to be deposited, and they are hereby respectively directed to receive and to retain the custody of all such documents and writings so directed to be deposited with them respectively, in the manner and for the purposes and under the rules and regulations concerning the same respectively, directed by such standing orders, and shall make such memorials and endorsements on and give such acknowledgments and receipts in respect of the same respectively as shall be thereby directed.

II. That all persons interested shall have liberty to, and the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, and postmasters, and every of them are, and is hereby required, at all reasonable hours of the day, to permit all persons interested to inspect during a reasonable time, and make extracts from or copies of the said maps, plans, sections, books, writings, extracts and copies of or from the same, so deposited with them respectively, on payment by each person to the clerk of the peace, sheriff clerk, clerk of the parish, schoolmaster, town clerk, or postmaster, having the custody of any such map, plan, section, book, writing, extract or copy, one shilling for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour, and after the rate of sixpence for every one hundred words copied therefrom.

(a) As to these standing orders, see ante, text, p. 13. This act applies to documents required to be deposited by general rules under "The Railway Companies Powers

Act, 1864," 27 & 28 Vict. c. 120, s. 34, post, and "The Railways Construction Facilities Act, 1864," 27 & 28 Vict. c. 121, s. 63, post.

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Clerks of the peace, &c. to receive the documents herein mentioned, and retain them for the purposes directed by the standing orders of the houses of Parliament.

Clerks of the peace, &c. to permit such documents to be inspected or copied by persons interested.

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Clerks of the peace, &c. for every omission to comply with the provisions of this act, liable to the penalty of 5*l.*, to be recovered in a summary way.

III. That in case any clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster or other person, shall in any matter or thing refuse or neglect to comply with any of the provisions hereinbefore contained, every clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster or other person, shall for every such offence forfeit and pay any sum not exceeding the sum of five pounds; and every such penalty shall, upon proof of the offence before any justice of the peace for the county within which such offence shall be committed, or by the confession of the party offending, or by the oath of any credible witness, be levied and recovered, together with the costs of the proceedings for the recovery thereof, by distress and sale of the goods and effects of the party offending, by warrant under the hand of such justice, which warrant such justice is hereby empowered to grant, and shall be paid to the person or persons making such complaint; and it shall be lawful for any such justice of the peace to whom any complaint shall be made of any offence committed against this act, to summon the party complained of before him, and on such summons to hear and determine the matter of such complaint in a summary way, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing or in print shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid and effectual to all intents and purposes as if an information in writing had been exhibited.

1 & 2 VICT. CAP. 80.

An Act for the Payment of Constables for keeping the Peace near Public Works (b). [10th August, 1838.]

1 & 2 VICT. CAP. 98.

An Act to provide for the Conveyance of the Mails by Railways (c). [14th August, 1838.]

Postmaster-General may require railway companies to convey the mails.

Whereas it is expedient that provision should be made by law for the conveyance of the mails by railways at a reasonable rate of charge to the public (*d*); be it enacted, That in all cases of railways already made or in progress or to be hereafter made within the United Kingdom, by which passengers or goods shall be conveyed in or upon carriages drawn or impelled by the power of steam, or by any locomotive or stationary engines, or animal or other power whatever, it shall be lawful for the Postmaster-General, by notice in writing under his hand delivered to the company of proprietors of any such railway, to require that the mails or post letter-bags shall from and after the day to be named in any such notice (being not less than twenty-eight days from the delivery thereof) be conveyed and forwarded by such company on their railway, either by the ordinary trains of carriages, or by special trains, as need may be, at such hours or times in the day or night as the Postmaster-General shall direct, together with (*e*) the guards appointed and employed by the Postmaster-General in charge thereof, and any other officers of the Post Office; and thereupon the said company shall, from and after the day to be named in such notice, at their own costs, provide sufficient carriages and engines on such railways for the conveyance of such mails and post letter-bags to the satisfaction of the Postmaster-General, and receive, take up, carry and convey, by such ordinary or special trains of carriages or otherwise, as need may be, all such mails or post letter-bags as shall for that purpose be tendered to them, or any of their officers, servants or agents, by any officer of the Post Office, and also receive, take up, carry and convey, in and upon the carriages carrying such mails or post letter-bags, the guards in charge thereof, and any other officers of the Post Office, and shall receive, take up, deliver and leave such mails or post letter-bags, guards and officers at such places in the line of such railway, on such days, at such hours or times in the day or night, and subject to all such reasonable regulations and restrictions as to speed of travelling, places, times and duration of stoppages, and times of arrival, as the Postmaster-General shall in that behalf from time to time order or direct: provided always, that the rate of speed to be required shall in no case exceed the maximum rate of speed prescribed by the directors of such railway or railways for the conveyance of passengers by their first class trains: but that no alteration in the rate of speed of any train by which the

(*b*) See the provisions of this act in a note to 8 & 9 Vict. c. 20, s. 6, post.

(*c*) This statute was founded on a report made by a select committee of the House of Commons in 1837. References are hereafter made to other Reports of Committees of the same House. This statute was made applicable to tramways in Ireland, by 23 & 24 Vict. c. 152, post: and to railway

companies incorporated by certificate of the Board of Trade under "The Railways Construction Facilities Act, 1864," by that act, 27 & 28 Vict. c. 121, post.

(*d*) See also 7 & 8 Vict. c. 85, s. 11, post.

(*e*) Or without a guard, 10 & 11 Vict. c. 85, s. 16, post.

mails shall be conveyed shall be made until six calendar months' previous notice shall be given to the Postmaster-General of any such intended alteration.

II. That it shall be lawful for the Postmaster-General (if he shall see fit) to require that the whole of the inside of any carriage used on any railway for the conveyance of mails or post letter-bags shall be exclusively appropriated for the purpose of carrying the mails.

III. That the company of proprietors of any such railway shall, on being required so to do by the Postmaster-General, provide and furnish (in addition to the carriages aforesaid) a separate carriage or separate carriages, fitted up as the Postmaster-General, or such person as he shall nominate in that behalf, shall direct, for the purpose of sorting letters therein, and shall forward the same carriage or carriages by their railway, at such hours or times, and subject to all such reasonable regulations as aforesaid, as the Postmaster-General shall in that behalf order or direct; and such company of proprietors shall receive, take up, carry and convey in any such last-mentioned carriage or carriages, all such post letter-bags and officers of the Post Office as the Postmaster-General shall reasonably require, and shall deliver and leave any post letter-bags and officers of the Post Office at such places on the line of the railway as the Postmaster-General shall in that behalf from time to time reasonably order and direct.

IV. That, in case the Postmaster-General shall at any time be desirous of sending by any such railway any of her Majesty's mail coaches or mail carts, with the mails or post letter-bags and guards thereof, and carriages for sorting letters, with any officers of the Post Office therein, instead of sending the said mails or post letter-bags, guards and officers of the Post Office by carriages to be provided by such railway company as aforesaid, then and in any such case such railway company shall, at the request of the Postmaster-General, signified by such notice as aforesaid, cause such mail coaches or mail carts, with the mails or post letter-bags and guards thereof, and carriages for sorting letters, with any officers of the Post Office therein, to be conveyed by the usual or proper trucks or frames on their said railway, subject to such regulations and restrictions of the Postmaster-General as hereinbefore mentioned.

V. That for the greater security of the mails or post letter-bags so to be carried or conveyed by railways, the company of proprietors of such respective railways along which such mails or post letter-bags, mail coaches or carts and carriages for sorting letters shall be so required by the Postmaster-General to be conveyed, and their respective officers, servants and agents, shall obey, observe and perform all such reasonable regulations respecting the conveyance, delivering and leaving of such mails and post letter-bags, guards and officers of the Post Office, mail coaches or carts and carriages, on any such railways, or on the line thereof, as the Postmaster-General, or such officer of the Post Office as he shall nominate in that behalf, shall in his discretion from time to time give or make: provided always, that it shall not be lawful for any officer or servant of the Post Office to interfere with or give orders to the engineer or other person having the charge of any engine upon any railway along which mails or post letter-bags shall be conveyed; but if any cause of complaint shall arise, the same shall be stated to the conductor or other officer of the railway company having the charge of the train, or to the chief officer at any station upon the railway; and in case of any default or neglect on the part of any officers or servants of the railway company to comply with any of the regulations of the Postmaster-General or other officer of the Post Office so to be nominated as aforesaid, the railway company shall be wholly responsible for the same.

VI. That every company of proprietors of any railway along which such mails or post letter-bags, mail coaches, carts or carriages shall be so required by the Postmaster-General to be conveyed, shall be entitled to such reasonable remuneration to be paid by the Postmaster-General to any such company of proprietors for the conveyance of such mails, post letter-bags, mail guards, and other officers of the Post Office, mail coaches, carts and carriages in manner required by such Postmaster-General, or by such officer of the Post Office as he shall in that behalf nominate as aforesaid, as shall (either prior to or after the commencement of such service) be fixed and agreed on between the Postmaster-General and such company of proprietors, or in case of difference of opinion between them, then as shall be determined by arbitration as hereinafter provided, but so that the services which may be required by the Postmaster-General, or by such officer of the Post Office as he in that behalf shall nominate as aforesaid, to be performed by any such company of proprietors, be not suspended, postponed or deferred by reason of such remuneration not having been then fixed or agreed on between the said Postmaster-General and such company of proprietors, or by reason of the award on any reference to arbitration to determine the remuneration not having been then made.

VII. That, notwithstanding any agreement entered into between the Postmaster-General and any such company, or any award to be made on any such reference as aforesaid, fixing the amount of remuneration to be paid to such company for any services to be rendered by them as aforesaid, it shall be lawful and competent to and for the Postmaster-General, by notice in writing, to require, from and after the day to be named in any such notice, not being less than twenty-eight days from the delivery thereof, any addition to be made to the services in respect of which such agreement shall be entered

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If required, carriage to be applied exclusively to such conveyance.

Railway company, if required, to provide separate carriage for sorting letters.

Postmaster-General may direct mails to be carried on railway in mail coaches in lieu of company's carriages.

Railway companies to be subject to directions of Post Office respecting conveyance of mails.

Remuneration to railway companies for conveyance of mails.

Agreements between Postmaster-General and railway companies as to amount of remuneration, &c. may be altered.

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into or award made; and in any such case, and also in case of a discontinuance of any part of such services as hereinafter provided, a fresh agreement shall be entered into between the Postmaster-General and such company, regulating the future amount of remuneration to be paid by the Postmaster-General to such company for such increased or diminished services, as the case may be; or if the parties cannot agree on such amount, the same shall be referred to arbitration in like manner as hereinbefore is mentioned and hereinafter provided as to any original agreement; and such arbitrators shall have power to award any compensation they may consider reasonable to be paid to any railway company for any loss that may have been occasioned to them by the discontinuance or alteration of the services previously agreed to be performed by them by any train or carriage specially required by the Postmaster-General to be forwarded for the conveyance of the mails, but so that nevertheless such increased or diminished services shall not be suspended, postponed, or deferred by reason of the amount of such increased or diminished remuneration not having been then fixed or agreed on between the Postmaster-General and such company of proprietors, or by reason of the award on any reference to arbitration to determine the amount of such increased or diminished remuneration not having been then made.

Postmaster-General may terminate services of railway companies on notice;

or may terminate services of railway companies without notice, subject to certain conditions.

Royal arms to be painted on engines or carriages provided for the service of the Post Office.

Bye-laws of railway companies not to be repugnant to provisions of act.

Penalty for refusing or neglecting to convey mails.

VIII. That it shall be lawful for the Postmaster-General, and he is hereby authorized, at any time during the continuance of the services of any company of proprietors as aforesaid, to give to such company, by writing under his hand, six calendar months' previous notice that such services, or any part thereof, shall cease and determine; and thereupon, at the expiration of such six calendar months' notice, the said services, or such part thereof as aforesaid, and the remuneration for the same, shall cease and determine.

IX. That it shall be lawful for the Postmaster-General at any time during the continuance of the services of any company of proprietors as aforesaid, by notice in writing under his hand, absolutely to determine and put an end to the same or any part thereof, without giving any previous notice, or on giving any notice less than six calendar months in respect thereof, and thereupon the said services shall cease and determine accordingly: provided, nevertheless, that in case the Postmaster-General shall, without giving six calendar months' notice as aforesaid, at any time determine the services to be required by the Postmaster-General of any company of proprietors, or any part of such services, without any cause whatever, or for any cause other than the default by such company of proprietors in the performance of any of the services to be required of them by the Postmaster-General, or the breach by such company of proprietors of any of their engagements with the Postmaster-General, then and in any such case the Postmaster-General shall make to such company a full and fair compensation for all loss thereby occasioned, the amount whereof, in case the parties differ about the same, shall be ascertained by arbitration as hereinafter mentioned.

X. That on all carriages to be provided for the service of the Post Office on any such railway there shall on the outside be painted the royal arms, in lieu of the name of the owner and of the number of the carriage, and of all other requisites, if any, prescribed by law in respect of carriages passing on any such railway; but the want of such royal arms on any carriage belonging to or used by the Post Office shall not form an objection to such carriage running on any railway, anything to the contrary notwithstanding.

XI. That it shall not be competent or lawful to or for the company of proprietors of any railway to make any bye-laws, orders, rules, or regulations which shall militate against or be contrary or repugnant to any of the enactments herein contained; and that if any company of proprietors shall make or shall have made any such bye-laws, orders, rules, or regulations, either prior or subsequently to the Postmaster-General signifying to the said company his intention that the mails or post letter-bags, mail coaches, carts, or carriages shall be conveyed by such railway, all such bye-laws, orders, rules and regulations, so far as they shall militate against or be contrary or repugnant to any of the enactments herein contained, shall be and be deemed absolutely void and of no effect, in like manner as if such bye-laws, orders, rules or regulations had never been made or passed, anything to the contrary in anywise notwithstanding.

XII. That if the company of proprietors of any railway, or any of their respective officers, servants, or agents, shall refuse or neglect to carry or convey any mails or post letter-bags, when tendered to them for such purpose by the Postmaster-General or any officer of the Post Office, or shall refuse to carry on their railway any mail coaches, carts, or carriages as hereinbefore provided, when so required by the Postmaster-General, or shall refuse or neglect to receive, take up, deliver and leave any such mails or post letter-bags, mail guards or other officers of the Post Office, mail coaches, carts, or carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as the Postmaster-General shall from time to time reasonably direct or appoint, as hereinbefore provided, or shall not obey, observe and perform all such regulations respecting the conveyance of the mails and post letter-bags, mail coaches, carts, and carriages, on any such railways as the Postmaster-General, or such officer of the Post Office as he shall nominate in that behalf, shall make for the purposes aforesaid, then and in any such case the company of proprietors who, or whose officer, servant, or agent, shall so offend in the premises, shall for every

such offence forfeit and pay a sum not exceeding twenty pounds; provided nevertheless, that the payment of or liability to such penalty shall not in any manner lessen or affect the liability of any such company under any bond which may have been given by them under the provisions hereinafter contained.

XIII. That it shall be lawful for the Postmaster-General, if he shall so think fit, to require the company of proprietors of any railway already made, or in progress, or to be hereafter made within the United Kingdom, to give security by bond to her Majesty, her heirs and successors, conditioned to be void if such company shall from time to time carry or convey, or cause to be carried or conveyed, all such mails or post letter-bags, mail guards and other officers of the Post Office, mail coaches, carts, and carriages, in manner hereinbefore mentioned, when thereunto required by the Postmaster-General or any officer of the Post Office duly authorized for that purpose, and shall receive, take up, deliver, and leave all such mails or post letter-bags, guards, and officers, mail coaches, carts, and carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as hereinbefore mentioned, and shall obey, observe, and perform all such regulations respecting the same as the Postmaster-General shall reasonably make, and shall well and truly do and perform, and cause to be done and performed, all such other acts, matters and things as by this act are required or directed to be done or performed by or on the part or behalf of such company, their officers, servants, and agents; and every such bond shall be taken in such sum and in such form as the Postmaster-General shall think proper; and every such security shall be renewed from time to time, whenever and so often as such bond shall be forfeited, and also whenever and so often as the Postmaster-General shall in his discretion require the same to be renewed; and if any company of proprietors of any such railway as aforesaid shall, when so required as aforesaid, refuse or neglect, for the space of one calendar month next after the delivery of any notice for such purpose to them given by or from the Postmaster-General, to execute to her Majesty, her heirs and successors, such bond to the effect and in manner aforesaid, or shall at any time refuse or neglect to renew such bond, whenever and so often as the same shall, by or in pursuance of this act, be required to be renewed, such company of proprietors shall forfeit one hundred pounds for every day during the period for which there shall be any refusal, neglect, or default to give or renew such security as aforesaid, after the expiration of the said one calendar month.

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Postmaster-General may require railway companies to give security by bond.

XIV. Provided always, That in all cases in which any railway, or part of a railway, may previous to the passing of this act have been demised or let by the company of proprietors thereof, the body corporate or company, or other persons to whom the same shall have been so demised or let, their successors, executors, administrators, or assigns, shall during the continuance of such lease be liable to all the provisions of this act, for or in respect of such railway or part of a railway, in lieu of such company of proprietors; but so that such lessees (not being a body corporate or company), their executors, administrators, or assigns, shall not be required in respect of any such railway, or part of a railway, to give security under the foregoing enactment to any amount in any one bond exceeding the sum of one thousand pounds, and shall not in any one year be liable in damages to be recovered upon any bonds which they may have given to any amount exceeding the sum of one thousand pounds and costs of suit.

Lessees of railway, not being a body corporate or company, not to be required to give security by bond above 1,000*l*.

XV. That all notices under the provisions of this act, by or on behalf of the Postmaster-General to any company of proprietors of any railway as aforesaid, shall be considered as duly served on any company of proprietors in case the same shall be given or delivered to any one or more of the directors of such company, or to the secretary or clerk of such company, or be left at any station belonging to such company.

Service of notices.

XVI. That in all cases in which the Postmaster-General and any company of proprietors of any railway shall not be able to agree on the amount of remuneration or compensation to be paid by the Postmaster-General to such company of proprietors for any services performed, or to be performed by them as hereinbefore mentioned, the same shall be referred to the award of two persons, one to be named by the Postmaster-General and the other by such company; and if such two persons cannot agree on the amount of such remuneration or compensation, then to the umpirage of some third person, to be appointed by such two first-named persons previously to their entering upon the inquiry; and the said award or umpirage, as the case may be, shall be binding and conclusive on the said parties, and their respective successors and assigns.

For settling differences between Postmaster-General and railway companies in certain cases.

XVII. That after any contract entered into or award made under the authority of this act shall have continued in operation for a period of three years, it shall be competent for any railway company who may consider themselves aggrieved by the terms of remuneration fixed by such contract or award, by notice under their common seal, to require that it shall be referred to arbitrators to determine whether any and what alteration ought to be made therein; and thereupon such arbitrators or umpire, to be appointed as hereinbefore mentioned, shall proceed to inquire into the circumstances and make their award therein, as in the case of an original agreement: provided always, that the services performed by such railway company for the Post Office shall in no wise be interrupted or impeded thereby.

Railroad companies, after contracts have existed for a certain period, may refer them to arbitrators to decide as to their continuance.

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Nomination of arbitrators to be within a limited time after application for references made.

Construction of terms.

1 Vict. c. 36.

XVIII. That in all references to be made under the authority of this act, the Post-master-General, or the railway company, as the case may be, shall nominate his or their arbitrator within fourteen days after notice from the other party, or in default, it shall be lawful for the arbitrator appointed by the party giving notice to name the other arbitrator; and such arbitrators shall proceed forthwith in the reference, and make their award therein within twenty-eight days after their appointment, or otherwise the matter shall be left to be determined by the umpire; and if such umpire shall refuse or neglect to proceed and make his award for the space of twenty-eight days after the matter shall have been referred to him, then a new umpire shall be appointed by the two first-named arbitrators, who shall in like manner proceed and make his award within twenty-eight days, or in default be superseded, and so toties quoties.

XIX. That whenever the term "company of proprietors," or "railway company," or "company," is used in this act, the same shall extend to and be construed to include the proprietors for the time being of any railway, whether a body corporate or individuals, and also (during the continuance of any demise or lease as aforesaid) any person, whether a body corporate, or company, or individuals, to whom any railway or part of a railway may, previous to the passing of this act, have been demised or let, and their successors, executors, administrators, and assigns, unless the subject or context be otherwise repugnant to such construction; and that the provisions of this act shall be construed according to the respective interpretations of the terms and expressions contained in an act passed in the first year of the reign of her present Majesty, intituled "An Act for consolidating the Laws relative to Offences against the Post Office of the United Kingdom, and for regulating the Judicial Administration of the Post Office Laws, and for explaining certain Terms and Expressions employed in those Laws," so far as those interpretations are not repugnant to the subject or inconsistent with the context of such provisions; and that this present act shall be deemed and construed to be a Post Office act, within the intent and meaning of the said last-mentioned act; and the pecuniary penalties hereby imposed shall be recovered and recoverable in the manner and form therein particularly mentioned and expressed with reference to the pecuniary penalties imposed by the Post Office acts: provided nevertheless, that any justice of the peace having jurisdiction for any county through which any railway shall pass, in respect of which any penalty or forfeiture under this act shall have been incurred, shall and may hear and determine any offence against this act which may subject any company to a pecuniary penalty not exceeding twenty pounds; and a summons issued under the Post Office acts by any such justice against any railway company for the recovery of any such penalty shall be deemed to be sufficiently served in case either the summons or a copy thereof be delivered to any officer, servant, or agent of such company, or be left at any station belonging to such company.

2 & 3 VICT. CAP. 45.

An Act to amend an Act of the Fifth and Sixth Years of the Reign of His late Majesty King William the Fourth, relating to Highways (f).

[17th August, 1839.]

5 & 6 Will. 4, c. 50,
s. 71.

Sect. 113.

Proprietors of

Whereas by an act passed in the session of Parliament holden in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," it is amongst other things by the said act enacted, that, whenever a railroad shall cross any highway for carts or carriages, the proprietors of the said railroad shall make and maintain good and sufficient gates at each of the said crossings, and shall employ good and proper persons to attend to the opening and shutting of such gates, so that the persons, carts, or carriages passing along such road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad; and any complaint for any neglect in respect of the said gates shall be made within one month after the said neglect to one justice, who may summon the party so complained against to appear before the justices at their next special sessions for the highways, who shall hear and decide upon the said complaint, and the proprietor so offending shall forfeit any sum not exceeding five pounds: And whereas it is also by the said act further enacted, that nothing in this act contained shall apply to any turnpike roads, except where expressly mentioned, or to any roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchyards, or pavements, which now are or may hereafter be paved, repaired, or cleansed, broken up, or diverted, under or by virtue of the provisions of any local or personal act or acts of Parliament: And whereas it is deemed expedient to amend the said provisions in the said act, and to extend the same to turnpike roads in England: Be it therefore enacted, That, wherever a railroad crosses or shall hereafter cross any

(f) This statute was made applicable to railway companies incorporated by certificate of the Board of Trade under "The

Railways Construction Facilities Act, 1864," by that act, 27 & 28 Vict. c. 121, post.

turnpike road or any highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the company of proprietors of the said railroad shall make and maintain good and sufficient gates across each end of such turnpike or other road as aforesaid at each of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages, passing along such turnpike or highway shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad (*g*); and any complaint for any neglect in respect of the said gates shall be made within one calendar month after the said neglect to any justice of the peace, or, if in Scotland, to the sheriff of the county, who may summon the party so complained against to appear before them or him at the next petty session or court to be holden for the district or division within which such gates are situate, who shall hear and decide upon the said complaint; and the proprietor or director so offending shall for each and every day of such neglect forfeit any sum not exceeding five pounds, together with such costs as to the justices or sheriff depute aforesaid before whom the conviction shall take place shall seem fit.

II. That the penalties by this act imposed, and the costs to be allowed and ordered by the authority of this act, shall, in England, be recovered and applied in the same manner as any penalties and costs under the said act, and, in Scotland, shall be recovered and applied to the maintenance of the statute labour roads within the district where the offence is committed.

III. That this act shall commence and take effect from and after the thirtieth day of September, one thousand eight hundred and thirty-nine.

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railroad to maintain gates where any railroad crosses the highways, &c.

Penalty 5*l*. for each day's neglect.

How penalties shall be recovered and applied.

Commencement of act.

3 & 4 VICT. CAP. 97.

An Act for regulating Railways (h). [10th August, 1840.]

Whereas it is expedient for the safety of the public to provide for the due supervision of railways; be it therefore enacted, *That after two months from the passing of this act, no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the Lords of the Committee of her Majesty's Privy Council appointed for trade and foreign plantations (i).*

II. *And be it enacted, That if any railway, or portion of any railway, shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is hereinbefore required before the opening of the railway; and any such penalty may be recovered in any of her Majesty's courts of record (j).*

III. *And be it enacted, That the Lords of the said committee may order and direct every railway company to make up and deliver to them returns, according to a form to be provided by the Lords of the said committee, of the aggregate traffic in passengers, according to the several classes, and of the aggregate traffic in cattle and goods respectively, on the said railway, as well as of all accidents which shall have occurred thereon attended with personal injury, and also a table of all tolls, rates, and charges from time to time levied on each class of passengers, and on cattle and goods, conveyed on the said railway; and, if the returns herein specified shall not be delivered within thirty days after the same shall have been required, every such company shall forfeit to her Majesty the sum of twenty pounds for every day during which the said company shall wilfully neglect to deliver the same; and every such penalty may be recovered in any of her Majesty's courts of record: provided always, that such returns shall be required, in like manner and at the same time, from all the said companies, unless the Lords of the said committee shall specially exempt any of the said companies, and shall enter the grounds of such exemption in the minutes of their proceedings.*

IV. *And be it enacted, That every officer of any company who shall wilfully make any false return to the Lords of the said committee shall be deemed guilty of a misdemeanor.*

V. *That it shall be lawful for the Lords of the said committee, if and when they shall think fit, to authorize any proper person or persons to inspect any railway (k); and it shall be lawful for every person so authorized, at all reasonable times, upon producing his authority, if required, to enter upon and examine the said railway, and the stations, works, and buildings, and the engines and carriages belonging thereto (l): Provided always, that*

No railway to be opened without notice to the Board of Trade.

Penalty for opening railways without notice.

Returns to be made by railway companies.

See act 5 & 6 Vict. c. 55, ss. 7, 8.

Penalty for making false returns.

Board of Trade may appoint persons to inspect railways.

(*g*) See 5 & 6 Vict. c. 55, s. 9, post, 11; 26 & 27 Vict. c. 92, s. 5, post.

(*h*) This act was made applicable to tramways in Ireland by 23 & 24 Vict. c. 152, post. See ante, p. 6, note (*f*).

(*i*) Recommended in the Second Report of 1839.

(*j*) Sects. 1 and 2 are repealed, and other enactments substituted by 5 & 6 Vict. c. 55, s. 3, and following sections, post, 10.

(*k*) Founded on Third Report of 1840.

(*l*) Extended by 7 & 8 Vict. c. 85, s. 15, post, 22.

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Penalty on persons obstructing inspector.

Copies of existing bye-laws to be laid before the Board of Trade;

otherwise to be void.

No future bye-laws to be valid till two calendar months after they have been laid before the Board of Trade.

Board of Trade may disallow bye-laws.

Provisions of railway acts requiring confirmation of bye-laws repealed.

Board of Trade may direct prosecutions to enforce provisions of railway acts.

Notice to be given to the company.

Prosecutions to be under sanction of Board of Trade, and within one year after the offence.

no person shall be eligible to the appointment as inspector as aforesaid who shall, within one year of his appointment, have been a director, or have held any office of trust or profit under any railway company (m).

VI. That every person wilfully obstructing any person, duly authorized as aforesaid, in the execution of his duty, shall, on conviction before a justice of the peace having jurisdiction in the place where the offence shall have been committed, forfeit and pay for every such offence any sum not exceeding ten pounds; and, on default of payment of any penalty so adjudged, immediately, or within such time as the said justice of the peace shall appoint, the same justice, or any other justice having jurisdiction in the place where the offender shall be or reside, may commit the offender to prison for any period not exceeding three calendar months; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner.

VII. And whereas many railway companies are or may hereafter be empowered by act of Parliament to make bye-laws, orders, rules, or regulations, and to impose penalties for the enforcement thereof, upon persons other than the servants of the said companies, and it is expedient that such powers should be under proper control (n), be it enacted, That true copies of all such bye-laws, orders, rules and regulations, made under any such powers by every such company before the passing of this act, certified in such manner as the Lords of the said committee shall from time to time direct, shall, within two calendar months after the passing of this act, be laid before the Lords of the said committee (o); and that every such bye-law, order, rule or regulation, not so laid before the Lords of the said committee within the aforesaid period, shall, from and after that period, cease to have any force or effect, saving in so far as any penalty may have been then already incurred under the same.

VIII. That no such bye-law, order, rule or regulation made under any such power, and which shall not be in force at the time of the passing of this act, and no order, rule or regulation annulling any such existing bye-law, rule, order or regulation which shall be made after the passing of this act, shall have any force or effect until two calendar months after a true copy of such bye-law, order, rule or regulation, certified as aforesaid, shall have been laid before the Lords of the said committee, unless the Lords of the said committee shall, before such period, signify their approbation thereof.

IX. That it shall be lawful for the Lords of the said committee, at any time either before or after any bye-law, order, rule or regulation (p) shall have been laid before them as aforesaid shall have come into operation, to notify to the company who shall have made the same, their disallowance thereof, and, in case the same shall be in force at the time of such disallowance, the time at which the same shall cease to be in force; and no bye-law, order, rule or regulation which shall be so disallowed shall have any force or effect whatsoever, or if it shall be in force at the time of such disallowance, it shall cease to have any force or effect at the time limited in the notice of such disallowance, saving in so far as any penalty may have been then already incurred under the same.

X. That so much of every clause, provision and enactment in any act of Parliament heretofore passed as may require the approval or concurrence of any justice of the peace, court of quarter sessions, or other person or persons, other than members of the said companies, to give validity to any bye-laws, orders, rules or regulations made by any such company, shall be repealed.

XI (q). That, whenever it shall appear to the Lords of the said committee that any of the provisions of the several acts of Parliament regulating any of the said companies, or the provisions of this act, have not been complied with on the part of any of the said companies, or any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the Lords of the said committee shall certify the same to her Majesty's Attorney-General for England or Ireland, or to the Lord Advocate for Scotland, as the case may require; and thereupon the said Attorney-General or Lord Advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts: Provided always, that no such certificate as aforesaid shall be given by the Lords of the said committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to give the same (r).

XII. That no legal proceedings shall be commenced under the authority of the Lords of the said committee against any railway company for any offence against this act, or any of the several acts of Parliament relating to railways, except upon such certificate of the

(m) Repealed by 7 & 8 Vict. c. 85, s. 15, post, 22.

(n) Founded on Second Report of 1839.

(o) Founded on Third Report of 1840.

(p) Sic—read "which."

(q) Founded on Third Report, 1840.

(r) Repealed by 7 & 8 Vict. c. 85, s. 16, and other provisions substituted by ss. 17, 18, post, 22.

Lords of the said committee as aforesaid, and within one year after such offence shall have been committed (s).

XIII. That it shall be lawful for any officer, or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine-driver, guard, porter or other servant in the employ of such company who shall be found drunk while employed upon the railway, or commit any offence against any of the bye-laws, rules or regulations of such company, or shall wilfully, maliciously or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway belonging to such company, or the works thereof respectively, shall be or might be injured or endangered, or whereby the passage of any of the engines, carriages or trains shall be or might be obstructed or impeded, and to convey such engine-driver, guard, porter or other servant so offending, or any person counselling, aiding or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act (t), and every such person so offending, and every person counselling, aiding or assisting therein as aforesaid, shall, when convicted before such justice as aforesaid (who is hereby authorized and required, upon complaint to him made, upon oath, without information in writing, to take cognizance thereof, and to act summarily in the premises), in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to her Majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour as aforesaid, for such period not exceeding two calendar months, as such justice shall appoint: such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner (u).

XIV. Provided always, That (if upon the hearing of any such complaint he shall think fit) it shall be lawful for such justice, instead of deciding upon the matter of complaint summarily, to commit the person or persons charged with such offence for trial for the same at the quarter sessions for the county or place wherein such offence shall have been committed, and to order that any such person so committed shall be imprisoned and detained in any of her Majesty's gaols or houses of correction in the said county or place in the meantime, or to take bail for his appearance, with or without sureties, in his discretion; and every such person so offending, and convicted before such court of quarter sessions as aforesaid (which said court is hereby required to take cognizance of and hear and determine such complaint), shall be liable, in the discretion of such court, to be imprisoned, with or without hard labour, for any term not exceeding two years.

XV. That, from and after the passing of this act, every person who shall wilfully do or cause to be done anything in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed in or upon the same, or shall aid or assist therein, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court before which he shall have been convicted, to be imprisoned, with or without hard labour, for any term not exceeding two years (x).

XVI. That if any person shall wilfully obstruct or impede any officer or agent of any railway company in the execution of his duty upon any railway, or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass (y) upon any railway, or any of the stations or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer or agent of the said company, every such person so offending, and all others aiding or assisting therein, shall and may be seized and detained, by any such officer or agent, or any person whom he may call to his assistance, until such offender or offenders can be conveniently taken before some justice of the peace for the county or place wherein such offence shall be committed, and when convicted before such justice as aforesaid, (who is hereby authorized and required, upon complaint to him upon oath, to take cognizance thereof and to act summarily in the premises,) shall in the discretion of such justice forfeit to her Majesty any sum not exceeding five pounds, and in default of payment thereof shall or may be imprisoned for any term not exceeding two calendar months, such imprisonment to be determined on payment of the amount of the penalty.

XVII. That no proceeding to be had and taken in pursuance of this act shall be quashed or vacated for want of form, or be removed by certiorari, or by any other writ or process

APPENDIX.

Punishment of servants of railway companies guilty of misconduct.

Justice of the peace empowered to send any case to be tried by the quarter sessions.

Punishment of persons obstructing railway.

For punishment of persons obstructing the officers of any railway company, or trespassing upon any railway.

Proceedings not to be quashed for want of form, or removed into the superior courts.

(s) This enactment is repeated in 7 & 8 Vict. c. 85, s. 18, post, 22.

(t) Founded on Second Report, 1839.

(u) The provisions of this section are extended by 5 & 6 Vict. c. 55, s. 17, post, 14.

(x) See *R. v. Bradford*, 29 L. J., M. C. 171. This section and also 14 & 15 Vict.

c. 19, ss. 6, 7, 8, were repealed by 24 & 25 Vict. c. 95. See now 24 & 25 Vict. c. 97, ss. 33, 35, 36, 37, 38; and 24 & 25 Vict. c. 100, ss. 32, 33, 34, 35, ante, Part I. Chapters X., XI.

(y) See *Jones v. Taylor*, 1 Ell. & Ell. 20. If justices think defendant was there under a bona fide claim of right, they may acquit.

APPENDIX.

Repeal of all provisions in railway acts that empower two justices to decide disputes respecting the proper places for openings in the ledges or flanches of railways.

Board of Trade to determine such disputes in future.

Communications to the Board to be left at their office.

Communications by the Board, how to be authenticated.

What shall be deemed good service on railway company.

Meaning of the words "railway" and "company."

whatsoever, into any of her Majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary notwithstanding.

XVIII. And whereas many railway companies are bound, by the provisions of the acts of Parliament by which they are incorporated or regulated, to make, at the expense of the owner or occupier of lands adjoining the railway, openings in the ledges or flanches thereof (except at certain places on such railway in the said act specified), for effecting communications between such railway and any collateral or branch railway to be laid down over such lands, and any disagreement or difference which shall arise as to the proper places for making any such openings in the ledges or flanches is by such acts directed to be referred to the decision of any two justices of the peace within their respective jurisdictions; and whereas it is expedient that so much of every clause, provision and enactment in any act of Parliament heretofore passed, as gives to any justice or justices the power of hearing or deciding upon any such disagreement or difference as to the proper places for any such openings in the ledges or flanches of any railway, should be repealed; be it therefore enacted, That so much of every such clause, provision and enactment as aforesaid, shall be repealed.

XIX. That in case any disagreement or difference shall arise between any such owner or occupier, or other persons, and any railway company, as to the proper places for any such openings in the ledges or flanches of any railway, (except at such places as aforesaid,) for the purpose of such communication, then the same shall be left to the decision of the Lords of the said committee, who are hereby empowered to hear and determine the same in such way as they shall think fit, and their determination shall be binding on all parties (z).

XX. That all notices, returns and other documents required by this act to be given to or laid before the Lords of the said committee, shall be delivered at or sent by the post to the office of the Lords of the said committee; and all notices, appointments, requisitions, certificates or other documents in writing, signed by one of the secretaries of the said committee, or by some officer appointed for that purpose by the Lords of the said committee, and purporting to be made by the Lords of the said committee, shall, for the purposes of this act, be deemed to have been made by the Lords of the said committee; and service of the same upon any one or more of the directors of any railway company, or on the secretary or clerk of the said company, or by leaving the same with the clerk or officer at one of the stations belonging to the said company, shall be deemed good service upon the said company.

XXI. That wherever the word "railway" is used in this act it shall be construed to extend to all railways constructed under the powers of any act of Parliament, and intended for (a) the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and wherever the word "company" is used in this act, it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators and assigns, unless the subject or context be repugnant to such construction.

5 & 6 VICT. CAP. 55.

An Act for the better Regulation of Railways, and for the Conveyance of Troops (b). [30th July, 1842.]

3 & 4 Vict. c. 97. Whereas by an act passed in the third and fourth years of the reign of her present Majesty, intituled "An Act for regulating Railways," provision was made for the supervision of railways; and whereas it is expedient for the safety of the public to make further provision for that purpose; be it enacted, That this act shall come into operation on the passing thereof.

Commencement of act.

Recited act and this act to be construed together.

Notice before opening railway repealed.

II. That the provisions of the said recited act and of this act shall be construed together as one act, except so far as the provisions of the said recited act are hereby repealed, or shall be inconsistent with the provisions of this act.

III. "And whereas by the said recited act it is enacted, that after two months from the passing of the said recited act, no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the Lords of the committee of her Majesty's Privy Council appointed for trade and foreign plantations; and whereas by the said recited act it is also enacted, that if any railway or portion of any railway shall be opened without

(z) Founded on Second Report, 1839.

(a) See *R. v. Bradford*, 29 L. J., M. C. 171.

(b) This act was made applicable to tramways in Ireland by 23 & 24 Vict. c.

152, post, and to railway companies incorporated by certificate of the Board of Trade under "The Railways Construction Facilities Act, 1864," by that act, 27 & 28 Vict. c. 121, post.

APPENDIX.

due notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is hereinbefore required before the opening of the railway, and any such penalty may be recovered in any of her Majesty's courts of record;" be it enacted, That the said recited provisions of the said act shall be and they are hereby repealed.

IV. That no railway or portion of any railway shall be opened for the public conveyance of passengers until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the Lords of the committee of her Majesty's Privy Council appointed for trade and foreign plantations, and until ten days after notice in writing shall have been given by the said company to the Lords of the said committee of the time when the said railway or portion of railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers, and ready for inspection (c).

Notice of intended opening of railway.

V. That if any railway or portion of any railway shall be opened without such notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open until the said notices shall have been duly given and shall have expired; and every such penalty may be recovered in any of her Majesty's courts of record, or in the Court of Session or in any of the sheriffs' courts in Scotland.

If railway opened without notice, company to forfeit 20*l*.

VI. That if the officer or officers appointed by the Lords of the said committee to inspect any such railway or portion of railway shall, after inspection thereof, report in writing to the Lords of the said committee that, in his or their opinion, the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together with the grounds of such opinion, it shall be lawful for the Lords of the said committee, and so from time to time, as often as such officers shall, after further inspection thereof, so report, to order and direct the company to whom such railway shall belong, to postpone such opening for any period not exceeding one calendar month at any one time, until it shall appear to the Lords of the said committee that such opening may take place without danger to the public; and if any such railway, or any portion thereof, shall be opened contrary to any such order and direction of the Lords of the said committee, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open contrary to such order and direction; and any such penalty may be recovered in any of her Majesty's courts of record, or in the Court of Session, or in any of the sheriffs' courts in Scotland: Provided always, that no such order as aforesaid shall be binding upon any railway company unless therewith shall be delivered to the said company a copy of the report of the officer or officers on which such order shall be founded.

Board of Trade empowered to postpone the opening.

VII. That every railway company shall, within forty-eight hours after the occurrence upon the railway belonging to such company of any accident attended with serious personal injury to the public using the same, give notice thereof to the Lords of the said committee; and if any company shall wilfully omit to give such notice, every such company shall forfeit to her Majesty the sum of five pounds for every day during which the omission to give the same shall continue; and every such penalty may be recovered in any of her Majesty's courts of record, or in the Court of Session, or in any of the sheriffs' courts in Scotland.

Notice of accidents to be given to the Board of Trade.

VIII. That the Lords of the said committee may order and direct any railway company to make up and deliver to them returns of serious accidents occurring in the course of the public traffic upon the railway belonging to such company, whether attended with personal injury or not, in such form and manner as the Lords of the said committee shall deem necessary and require for their information with a view to the public safety (d); and if any such returns shall not be so delivered within fourteen days after the same shall have been required, every such company shall forfeit to her Majesty the sum of five pounds for every day during which the said company shall neglect to deliver the same; and every such penalty may be recovered in any of her Majesty's courts of record, or in the Court of Session, or in any of the sheriffs' courts in Scotland: Provided always, that all such returns shall be privileged communications, and shall not be evidence in any court whatsoever.

Board of Trade empowered to direct returns.

IX. And whereas by an act passed in the second and third years of her present Majesty (e), and intituled "An Act to amend an Act of the Fifth and Sixth Years of his late Majesty King William the Fourth, relating to Highways," it was enacted, that whenever a railway crosses, or shall hereafter cross, any turnpike road, or any other highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the said railway shall make and maintain good and sufficient gates across each end of such turnpike or other road at each end of the said crossings, and shall employ good and proper

Gates at level crossings to be kept closed across the road.

2 & 3 Vict. c. 45.

(c) Founded on Second Report, 1839.
See the circular issued by the Board of Trade after receipt of the first notice, post.

(d) Founded on Third Report, 1840.
(e) Ante, p. 6.

APPENDIX.

Proviso.

Railway companies to erect and maintain fences.

Disputes between connecting railways to be decided by the Board of Trade.

Powers of making branch communication with railways, and of entering upon them with locomotive engines, to be regulated by the Board of Trade.

Defining a passenger railway.

Alteration of dangerous level crossings.

persons to open and shut such gates, so that the persons, carts or carriages passing along such turnpike or other road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railway: And whereas by the acts relating to certain railways, it is provided that such gates shall be kept constantly closed across the railway, except during the time when carriages or engines passing along the railway shall have to cross such turnpike or other road; and whereas experience has shown that it is more conducive to safety that such gates should be kept closed across the turnpike or other road instead of across the railway: Be it therefore enacted, That, notwithstanding anything to the contrary contained in any act of Parliament heretofore passed, such gates shall be kept constantly closed across each end of such turnpike or other roads, in lieu of across the railway, except during the time when horses, cattle, carts, or carriages passing along such turnpike or other road, shall have to cross such railway; and such gates shall be of such dimensions, and so constructed as, when closed across the ends of such turnpike or other roads, to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway while the gates are closed: Provided always, that it shall be lawful for the Lords of the said committee, in any case in which they are satisfied that it will be more conducive for the public safety that the gates at any level crossing over any such turnpike or other road should be kept closed across the railway, to order and direct that such gates shall be kept so closed, instead of across the road; and such order of the Lords of the said committee shall be a sufficient authority for the directors or proprietors of any railway company to whom such order is addressed, for keeping such gates closed, in the manner directed by the Lords of the said committee (*f*).

X. And whereas it is expedient that further provision be made for the safety of the public in respect of the fences of railways (*f*): Be it enacted, That all railway companies shall be under the same liability of obligation to erect, and to maintain and repair, good and sufficient fences throughout the whole of their respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of justices, by virtue of the provisions to that effect in the acts of Parliament relating to such railways respectively (*g*).

XI. That where two or more railway companies whose railways have a common terminus or a portion of the same line of rails in common, or which form separate portions of one continued line of railway communication, shall not be able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, it shall be lawful for the Lords of the said committee, upon the application of either of the parties, to decide the questions in dispute between them, so far as the same relate to the safety of the public, and to order and determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either of the parties respectively; and if any railway company shall refuse or wilfully neglect to obey any such order made upon or against such company by the Lords of the said committee pursuant to this provision, such company shall forfeit to her Majesty the sum of twenty pounds per day for every day during which such refusal or neglect shall continue; and every such penalty may be recovered in any of her Majesty's courts of record, or in the Court of Session, or in any of the sheriffs' courts in Scotland.

XII. And whereas powers of laying down branch lines opening into the ledges or flanches of main lines of railway, and of entering upon and passing along such main lines with carriages and waggons drawn by locomotive engines, or by other mechanical or animal power, and also powers to form roads or railways across existing railways on a level, have been given by various acts relative to railways, to the owners or occupiers of lands adjoining the railway, and to other persons with their consent; and whereas experience has shown that the exercise of such powers without limitation would in many cases be attended with danger to the public using such railway (*h*): Be it therefore enacted, That if, in the case of any railway on which passengers are conveyed by steam or other mechanical power, it shall appear to the Lords of the said committee that such power as aforesaid cannot be so exercised without seriously endangering the public safety, and that an arrangement may be made with a due regard to existing rights of property, it shall be lawful for the Lords of the said committee to order and direct that such powers shall only be exercised subject to such conditions as the Lords of the said committee shall direct: Provided always, that no railway shall be considered a passenger railway if two-thirds or more of the gross annual revenue of such railway shall be derived from the carriage thereon of coals, ironstone, or other metals or minerals.

XIII. And whereas in many cases railways have been made to cross turnpike roads, highways and private roads and tramways on the level, and the companies to whom such railways belong would in some cases be willing, at their own expense, to carry such roads and tramways over or under such railways by means of a bridge or archway for the greater safety of the public, but have no authority so to do: And whereas it would promote the

(*f*) Founded on Second Report, 1839. See also 8 & 9 Vict. c. 20, s. 47, post.

(*g*) 8 & 9 Vict. c. 20, s. 68, post, is a substitution for this; *Manchester, Sheffield*

and *Lincolnshire R. Co. v. Wallis*, 14 C. B. 213.

(*h*) Founded on Third Report, 1840.

public safety if railway companies were enabled, under the sanction and authority of the Lords of the said committee, to substitute bridges or archways for such level crossings as aforesaid: Be it therefore enacted, That in all cases where any railway company shall be willing, at their own expense, to carry any turnpike road, highway or private road or tramway over or under their railway by means of a bridge or arch in lieu of crossing the same on the level, it shall be lawful for the Lords of the said committee, on the application of the said company, and after hearing the several parties interested, if it shall appear to the Lords of the said committee that such level crossing endangers the public safety, and that the proposal of the company does not involve any violation of existing rights or interests without adequate compensation, to give the said company full power and authority for removing the danger at their own expense, either by building a bridge or by such other arrangement as the nature of the case shall require, subject to such conditions as the Lords of the said committee shall direct (i).

XIV. And whereas it is essential for the public safety, and also for the proper maintenance of railways in a state of efficiency for the public service, that railway companies should have the power, in case of accidents or slips happening, or being apprehended, to their cuttings and embankments or other works, to enter upon the lands adjoining their respective railways, for the purpose of repairing or renewing the same, and to do such works as may be necessary for the purpose; be it therefore enacted, That it shall be lawful for the Lords of the said committee to empower any railway company, in case of any accident or slip happening or being apprehended to any cutting, embankment or other work belonging to them, to enter upon any lands adjoining their railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose: Provided always, that in case of necessity, it shall be lawful for any railway company to enter upon such lands, and do such works as aforesaid, without having obtained the previous sanction of the Lords of the said committee; but in every such case such railway company shall, within forty-eight hours after such entry, make a report to the Lords of the said committee, specifying the nature of such accident or apprehended accident, and of the works necessary to be done; and such powers shall cease and determine if the Lords of the said committee shall, after considering the said report, certify that their exercise is not necessary for the public safety: Provided also, that such works shall be as little injurious to the said adjoining lands as the nature of the accident, or apprehended accident, will admit of, and shall be executed with all possible despatch; and full compensation shall be made to the owners and occupiers of such lands for the loss, or injury, or inconvenience sustained by them respectively by reason of such works; the amount of which compensation, in case of any dispute about the same, shall be settled in the same manner as cases of disputed compensation are directed to be settled by the acts relating to the railway on which such works may become necessary: Provided always, that no land shall be taken permanently by any railway company for such works without a certificate from the Lords of the said committee, as hereinafter described.

XV. And whereas, by various acts relating to railways, compulsory powers are given to railway companies of purchasing and taking lands for the construction of such railways, and it is provided, that such compulsory powers shall not be exercised after the expiration of certain limited periods from the passing of the said acts; and whereas it is sometimes found necessary for the public safety that additional land shall be taken after the expiration of such periods, for the purpose of giving increased width to the embankments and inclination to the slopes of railways, or for making approaches to bridges or archways, or for doing such works for the repair or prevention of accidents as are hereinbefore described; be it therefore enacted, That in every case in which the Lords of the said committee shall certify that the public safety requires additional land to be taken by any railway company for such purposes as aforesaid, the compulsory powers of purchasing and taking land contained in the act or acts of such railway company, together with all the clauses and provisions relative thereto, shall, as regards such portion or portions of land as are mentioned in the certificate of the Lords of the said committee, revive and be in full force for such further period as shall be mentioned in such certificate: provided always, that any railway company applying to the Lords of the said committee for any such certificate shall give fourteen days' notice in writing, in the manner prescribed by the act or acts of such company for serving notices on land-owners, of their intention to make such application to all the parties interested in such lands, or such of them as shall be known to the company, and shall state in such notice the particulars of the lands required; and if any of such parties interested shall apply within the said period of fourteen days to the Lords of the said committee, such party shall be heard by them before any such certificate is given: provided also, that where any such application shall have been made by any railway company to the Lords of the said committee, upon which application any such certificate shall have been refused, the directors of such railway company shall, if required by the Lords of the said committee, repay to the party resisting such application any expenses which he or they may have incurred in resisting such application.

APPENDIX.

Power for railway companies to enter upon adjoining lands to repair accidents.

Compulsory powers of taking land for the purposes of railways extended, where thought necessary for safety, by the Board of Trade.

(i) See also 26 & 27 Vict. c. 92, ss. 6, 7, 8, 16, post.

APPENDIX.

Carriages of greater weight than four tons may be used on railways.

Punishment of persons employed on railways guilty of misconduct.

Sheriffs to have jurisdiction in Scotland.

Communications to and from the Board of Trade, and service of notices, &c. on railway company.

Railway com-

XVI. And whereas, by various acts relating to railways, it is enacted, that no carriage or waggon shall carry or bear at any one time, upon the railway (including the weight of such carriage) more than four tons, and experience has shown that it is in many cases more conducive to safety to use a heavier description of carriage or waggon upon railways than was originally contemplated: be it therefore enacted, That every provision contained in any such act or acts respectively limiting the weight to be carried or borne at any one time in any carriage or waggon upon any railway (including the weight of such carriage or waggon) to four tons, shall be and the same is hereby repealed; and that, notwithstanding any thing in any act contained, it shall be lawful for any railway company to use, and to permit to be used, upon any railway carriages or waggons carrying or bearing (including the weight of such carriage) a greater weight than four tons, subject to such regulations as may from time to time be made and be in force pursuant to any act or acts of Parliament already or hereafter to be passed in that behalf.

XVII. And whereas by the said recited act for regulating railways (*k*), provision is made for the punishment of servants of railway companies guilty of misconduct, and it is expedient to extend such provision (*l*); be it enacted, That it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine-driver, waggon-driver, guard, porter, servant or other person employed by the said or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the said railway, who shall commit any offence against any of the bye-laws, rules or regulations of the said company, or who shall wilfully, maliciously or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon such railway or the works thereof respectively shall be or might be injured or endangered, or whereby the passage of any engines, carriages or trains, shall be or might be obstructed or impeded, and to convey such engine-driver, guard, porter, servant or other person so offending, or any person counselling, aiding or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act; and every such person so offending, and every person counselling, aiding or assisting therein as aforesaid, shall, when convicted upon the oath of one or more credible witness or witnesses before such justice as aforesaid (who is hereby authorized and required, upon complaint to him made upon oath, without information in writing, to take cognizance thereof and to act summarily in the premises), in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to her Majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour as aforesaid, for such period not exceeding two calendar months, as such justice shall appoint, such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner.

XVIII. That in all cases in which by the present or the said recited act for regulating railways, it is provided, that offenders shall be taken before one or more justices of the peace for the place within which the offence was committed, it shall be lawful, in case the offence is committed in Scotland, to take such offenders before the sheriff of the county, or other magistrate acting for the district within which such offence shall be committed, or where such offender shall be apprehended, without any warrant or authority other than this act; and such sheriff or magistrate is hereby empowered and required, on the application of the railway company, to proceed in all respects as if the words "sheriff or magistrate" had been substituted for the word "justice" in the said acts, and shall be entitled summarily, and without a jury, to execute the powers thereby and hereby committed to him.

XIX. That all notices, returns and other documents required by this act or by the said recited act, to be given to or laid before the Lords of the said committee, shall be delivered at or sent by the post to the office of the Lords of the said committee; and all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by one of the secretaries of the said committee, or by some officer appointed for that purpose by the Lords of the said committee, and purporting to be made by the Lords of the said committee, shall, for the purposes of this and of the said recited act, be deemed to have been made by the Lords of the said committee, and that, in the absence of evidence to the contrary, without proof of the authority of the person signing the same, or of the signature thereto; and service of the same at one of the terminal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post addressed to him at such office, shall be deemed good service upon the said company.

XX (*m*). That whenever it shall be necessary to move any of the officers or soldiers of

(*k*) 3 & 4 Vict. c. 97, s. 13, ante, p. 9.

(*l*) Founded on Second Report, 1839.

(*m*) Founded on Fourth Report, 1840.

her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary-at-War and such railway companies for the conveyances of such forces, on the production of a route or order for their conveyance signed by the proper authorities (n).

XXI. That whenever the word "railway" is used in this or in the said recited act, it shall be construed to apply to all railways used or intended to be used (o) for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and whenever the word "company" is used in this or in the said recited act, it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators and assigns, unless in either of the above cases the subject or context be repugnant to such construction.

XXII. That all penalties under this act, for the application of which no special provision is made, shall be recovered in the name and for the use of her Majesty, in the manner provided by the said recited act for regulating railways.

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panies shall convey military and police forces at prices to be settled.

Meaning of the words "railway" and "company."

Application of penalties.

5 & 6 VICT. CAP. 79.

An Act to repeal the Duties payable on Stage Carriages and on Passengers conveyed upon Railways, and certain other Stamp Duties in Great Britain, and to grant other Duties in lieu thereof, and also to amend the Laws relating to Stamp Duties (p). [5th August, 1842.]

By this statute, reciting 2 & 3 Will. 4, c. 120, it is enacted, sect. 1, that the duties thereby imposed in respect of passengers conveyed for hire along any railway in Great Britain are repealed; and by sect. 2, in lieu of the duties by this act repealed there shall be raised, levied, collected and paid, unto and for the use of her Majesty, her heirs and successors, in and throughout Great Britain, for and in respect of (*inter alia*) the passengers conveyed upon any railway, the several duties or sums of money set down in figures against the same respectively, or otherwise specified and set forth in the schedule to this act; and that the said schedule shall be deemed and taken to be a part of this act; and that all the said duties shall be under the care and management of the Commissioners of Stamps and Taxes for the time being (q), and shall be denominated and deemed to be stamp duties.

The above-mentioned schedule contains the following duties in respect of passengers conveyed for hire, by carriages travelling upon railways; (that is to say,)

For and in respect of all passengers conveyed for hire upon or along any railway, a duty at and after the rate of 5*l.* for every 100*l.* upon all sums received or charged for the hire, fare or conveyance, of all such passengers.

IV. That the proprietor or company of proprietors of every railway in Great Britain, and every other person who shall carry or convey, or cause to be carried or conveyed, any passenger for hire in or upon any railway in Great Britain, shall, from time to time and at all times, keep and enter or cause to be entered in a book or books to be kept for that purpose, in such manner and form as the Commissioners of Stamps and Taxes shall direct or approve, a just and true account of all and every sum and sums of money which shall be received or charged daily by or for such proprietor or company or other person for the hire, fare or conveyance of all such passengers as aforesaid, whether the same shall be received for the conveyance of passengers on the railway of such proprietor or company or other person only, or on such last-mentioned railway and any other railway, or on any such other railway only, and for or in respect of all which sums of money the duties charged by this act shall, in manner hereinafter directed, be paid by the said proprietor or company or other person so receiving or charging the same as aforesaid (r), without any deduction or abatement thereout on any account or pretence whatever; and the proprietor or company of proprietors of any railway so receiving or charging any such sums of money as aforesaid, shall also in like manner keep and enter or cause to be entered an account of all sums of money paid or accounted for, or to be paid or accounted for, by

Accounts to be kept of money received for the conveyance of passengers on railways.

(n) Amended by 7 & 8 Vict. c. 85, s. 12, post, 20. See also 16 & 17 Vict. c. 69, s. 18.

(o) See *R. v. Bradford*, 29 L. J., M. C. 171.

(p) Sections 2 to 7, both inclusive, and sects. 24, 25, and 26, are made applicable to railway companies incorporated by certificate of the Board of Trade under "The Railways Construction Facilities Act,

1864," by that act, 27 & 28 Vict. c. 121, post.

(q) Now transferred to the Commissioners of Excise by 10 & 11 Vict. c. 42, post.

(r) The duties are to be paid by the company actually receiving the money from the public, *Attorney-General v. Oxford, W. & W. R. Co.*, 31 L. J. (Exch.) 218.

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such proprietor or company to the proprietor or company of proprietors of any other railway (specifying the same) upon which any of such passengers shall be carried or conveyed, as his or their share or proportion of any such sums of money so received or charged as aforesaid, or as or for or in the nature of toll or otherwise for the use of such last-mentioned railway, in the conveyance of such passengers; and the proprietor or company of proprietors of every such last-mentioned railway shall in like manner keep and enter or cause to be entered an account of all sums of money so paid or accounted for to him or them as last aforesaid, and for or in respect of which the duties shall or ought to have been paid as aforesaid by such first-mentioned proprietor or company; and every such proprietor and company and other person and persons respectively shall, within five days after the *first Monday* in every calendar month (*s*), deliver to the Commissioners of Stamps and Taxes, or to the proper officer appointed for receiving the same, a true copy or true copies of the account or accounts by this act directed to be kept, so far as the same shall relate to all sums of money received or charged and paid or accounted for as aforesaid during the preceding four or five weeks, as the case may be; (that is to say,) from and including the first Monday in the preceding month up to the first Monday of the month in which such account shall be rendered or ought to be rendered as aforesaid; and to and with every such account there shall be annexed and delivered an affidavit (to be taken before any one of her Majesty's justices of the peace) of such proprietor or other person as aforesaid, or of the secretary, chief clerk, or accountant of such proprietor or company or other person, stating that the deponent is well acquainted with the books and accounts of the said proprietor, company or other person, and that he has examined and checked the same, and also the account to which such affidavit is annexed, and that to the best of his knowledge, information and belief, such last-mentioned account doth contain and is a true and faithful account of all and every sum and sums of money received or charged by or for such proprietor or company or other person aforesaid for the hire, fare or conveyance of passengers on any railway during the period comprised in such account, and of all other matters and things required by this act to be contained in such account; and such proprietor or company or other persons shall, at the time of delivering every such account, pay or cause to be paid to the Receiver General of Stamps and Taxes, or to the officer authorized by the said commissioners to receive the same, for the use of her Majesty, the duties chargeable under this act for or in respect of all and every the sum and sums of money so received or charged as aforesaid, and contained, or which ought to be contained, in such account.

Proprietors of railways to deduct the duty on the sums to be paid over to other proprietors.

V. Provides and enacts, That it shall be lawful (where there shall be no express contract or agreement between the parties to the contrary) for any such proprietor or company to deduct from and retain out of the monies to be paid over to any such other proprietor or company as aforesaid, the amount of the duties by this act chargeable thereon, and which such proprietor or company receiving such monies shall have paid or be liable to pay.

Books containing any such accounts to be open to inspection of officers of stamps.

VI. That all and every the book and books of every such proprietor or company or other person, in which any account relating to such passengers, or to the money received or charged for the hire, fare or conveyance of the same, or to any money received from or paid or accounted for to any other proprietor or company for such hire, fare or conveyance as aforesaid, or a proportion thereof, or as or for such toll as aforesaid, shall be entered or kept, shall be open for the inspection and examination at all seasonable times of any officer or officers of stamp duties authorized by the Commissioners of Stamps and Taxes in that behalf; and every such officer shall be at liberty to take copies of or extracts from any such book or account as aforesaid; and if any such proprietor or other person, or the secretary or accountant, or any clerk or officer of any such proprietor or company or person, having or keeping the custody or possession of any such book, or having power to produce the same, shall, upon demand made by any such officer, and upon producing and showing his authority, refuse to permit such officer of stamp duties to inspect and examine such book, or to take copies thereof or extracts therefrom, or of or from any account entered or contained therein, or shall refuse to produce such book to such officer of stamp duties for his inspection and examination, every such person so offending shall for every such offence forfeit the sum of 50*l*.

Penalty for refusing to permit inspection.

Railway proprietors to give bond for securing the duties.

VII. That the proprietor or company of proprietors of every such railway, and every other person, before any passengers shall be conveyed or caused to be conveyed by him or them on any railway as aforesaid, shall give security, by bond, to her Majesty, her heirs and successors, with a condition that such proprietor or company, or other person as aforesaid, shall from time to time enter and keep, and cause to be kept and rendered, in the manner directed by this act, the accounts by this act required to be kept and rendered by such proprietor and company and persons respectively, containing and setting forth justly, truly and faithfully all the several matters and things by this act required to be contained and set forth therein; and that such proprietor or company or person, and his or their secretary, accountant and clerk, and every other person under or subject to his or their order, direction or control, having the custody or possession of any books or book of

Bond for securing duties.

(*s*) See now 26 & 27 Vict. c. 33, s. 13, post.

such proprietor or company, or other person as aforesaid, in which any account relating to any passengers conveyed upon any railway, or the money received, charged, accounted for, or paid for the hire, fare or conveyance of the same, shall be contained or entered, shall from time to time, upon every reasonable request of any officer of stamp duties authorized as aforesaid, produce and show to such officer, and permit him to inspect and examine the same, and to take copies thereof or extracts therefrom, and of and from any account entered or contained therein; and that such proprietor or company, or other person aforesaid, shall and will well and truly pay, or cause to be paid, for the use of her Majesty, her heirs and successors, at the times and in manner directed by this act, all and every the duties which shall from time to time become chargeable under this act, and payable by him or them, upon or for or in respect of the passengers, or the hire or fare or conveyance of the passengers, which shall be so conveyed as aforesaid along any railway; and that such proprietor or company, or other person aforesaid, shall well and truly do and perform, and cause to be done and performed, all such acts, matters and things as by this act are required or directed to be done or performed by or on the part or behalf of such proprietors or company or other person; and every such bond shall be taken with sufficient sureties to the satisfaction of the Commissioners of Stamps and Taxes, and in such sum as the said commissioners may judge to be reasonable and proper; and every such security shall be renewed from time to time, whenever and so often as such bond shall be forfeited, or as the parties to the same or any of them shall die, or become bankrupt or insolvent, or reside in parts beyond the seas, and also whenever and so often as the said commissioners shall in their discretion require the same to be renewed; and if any proprietor or company of proprietors of any such railway, or other person as aforesaid, shall convey or cause to be conveyed upon any railway, any passengers for hire, without having first given such security by bond to her Majesty, in manner hereinbefore directed, or if any proprietor or company of proprietors of any railway shall permit or suffer any passengers to be conveyed for hire upon such last-mentioned railway, by any other person or company, before such other person or company shall have given security as aforesaid, and before a certificate signed by the proper officer of stamp duties in that behalf (which certificate such officer is hereby authorized and required to give), that such security hath been given, shall have been issued, or after notice in writing, signed by any authorized officer of stamp duties, and delivered to the secretary or chief clerk of the proprietor or company of proprietors of such railway, or left at the office of such railway, with any clerk or officer there, that any such security ought, in pursuance of this act, to be renewed, or is required to be renewed, and before a certificate signed as aforesaid, that the same has been renewed, shall have been issued; or if any such proprietor or company of proprietors, or other person, shall refuse or neglect to renew such security whenever and so often as the same is or shall by or in pursuance of this act be required to be renewed, such proprietor or company or person shall forfeit the sum of 100*l.*, and the further sum of 100*l.* for every day during the period for which there shall be any refusal, neglect or default to give or renew such security as aforesaid, or for every day on which any such passengers shall be permitted to be conveyed before such security shall be given or renewed, and a certificate thereof issued as aforesaid according to the true intent and meaning of this act.

XXIV. That all pecuniary penalties imposed by or which may be incurred under this act may be sued or prosecuted for and recovered by the same ways and means, and in the same manner and form, and be mitigated and applied as any other penalty incurred under any act relating to the stamp duties may be sued for, prosecuted and recovered, mitigated and applied; and that all the powers, provisions, regulations, forfeitures, pains and penalties contained in or imposed by any act or acts in force with relation to any of the duties under the management of the Commissioners of Stamps and Taxes, so far as the same are or may be applicable in cases not by this act expressly provided for, and so far as the same shall not be superseded by, and as the same shall be consistent with, the express provisions of this act, shall be of full force and effect with respect to the duties by this act granted, and to the matters and things charged or chargeable therewith, in respect of which duty is hereby granted, and shall be applied and put in execution for recovering, securing and collecting the said duties hereby granted, and for preventing, detecting and punishing all frauds, forgeries and other offences relating thereto, as fully and effectually to all intents and purposes as if such powers, provisions, regulations, forfeitures, pains and penalties had been repeated and specially enacted in this act with reference to the duties by this act granted and made payable.

Penalties imposed
by this act how
to be recovered.

XXV. That wherever in this act, with reference to any person, matter or thing, any word or words is or are used importing the singular number or the masculine gender only, yet such word or words shall be understood to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

Construction of
terms used in this
act.

XXVI. That this act shall commence and take effect on the respective days herein-after mentioned; (that is to say,) so much thereof as relates to the duties on passengers

Commencement
of act.

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conveyed on railways shall commence and take effect on the 1st day of August, in this present year 1842.

7 & 8 VICT. CAP. 85.

An Act to attach certain Conditions to the Construction of future Railways authorized, or to be authorized, by any Act of the present or succeeding Sessions of Parliament; and for other Purposes in relation to Railways (t).

[9th August, 1844.]

If, after twenty-one years from the passing of the act for the construction of any future railway, the profits shall exceed 10l. per cent., the treasury may revise the scale of tolls and fix a new scale.

Proviso.

Option of purchase of future railways.

Proviso.

Existing railways not to be subjected to the options.

Reservation to Parliament of the consideration of future policy in regard to the said options.

Whereas it is expedient that the concession of powers for the establishment of new lines of railway should be subjected to such conditions as are hereinafter contained for the benefit of the public (u); be it enacted, That if at any time after the end of twenty-one years from and after the first day of January, next after the passing of any act of the present or of any future session of Parliament, for the construction of any new line of passenger railway, whether such new line be a trunk, branch, or junction line, and whether such new line be constructed by a new company incorporated for the purpose, or by any existing company, the clear annual profits divisible upon the subscribed and paid-up capital stock of the said railway, upon the average of the three then last preceding years, shall equal or exceed the rate of ten pounds for every hundred pounds of such paid-up capital stock, it shall be lawful for the Lords Commissioners of her Majesty's Treasury, subject to the provisions hereinafter contained, upon giving to the said company three calendar months' notice in writing, of their intention so to do, to revise the scale of tolls, fares and charges limited by the act or acts relating to the said railway, and to fix such new scale of tolls, fares and charges applicable to such different classes and kinds of passengers, goods and other traffic on such railway, as in the judgment of the said Lords Commissioners, assuming the same quantities and kinds of traffic to continue, shall be likely to reduce the said divisible profits to the said rate of ten pounds in the hundred: Provided always, that no such revised scale shall take effect, unless accompanied by a guarantee to subsist as long as any such revised scale of tolls, fares and charges shall be in force, that the said divisible profits, in case of any deficiency therein, shall be annually made good to the said rate of ten pounds for every hundred pounds of such capital stock: Provided also, that such revised scale shall not be again revised or such guarantee withdrawn, otherwise than with the consent of the company, for the further period of twenty-one years.

II. That whatever may be the rate of divisible profits on any such railway, it shall be lawful for the said Lords Commissioners, if they shall think fit, subject to the provisions hereinafter contained, at any time after the expiration of the said term of twenty-one years, to purchase any such railway, with all its hereditaments, stock and appurtenances, in the name and on behalf of her Majesty, upon giving to the said company three calendar months' notice in writing of their intention, and upon payment of a sum equal to twenty-five years' purchase of the said annual divisible profits, estimated on the average of the three then next preceding years: Provided, that if the average rate of profits for the said three years shall be less than the rate of ten pounds in the hundred, it shall be lawful for the company, if they shall be of opinion that the said rate of twenty-five years' purchase of the said average profits is an inadequate rate of purchase of such railway, reference being had to the prospects thereof, to require that it shall be left to arbitration, in case of difference, to determine what (if any) additional amount of purchase-money shall be paid to the said company: Provided also, that such option of purchase shall not be exercised, except with the consent of the company, while any such revised scale of tolls, fares and charges shall be in force.

III. Provided always, That the option of revision or purchase shall not be applied to any railway made or authorized to be made by any act previous to the present session; and that no branch or extension of less than five miles in length of any such line of railway shall be taken to be a new railway within the provisions of this act; and that the said option of purchase shall not be exercised as regards any branch or extension of any railway, without including such railway in the purchase, in case the proprietors thereof shall require that the same be so included.

IV. And whereas it is expedient, that the policy of revision or purchase should in no manner be prejudged by the provisions of this act, but should remain for the future consideration of the legislature, upon grounds of general and national policy: and whereas it is not the intention of this act that, under the said powers of revision or purchase, if called into use, the public resources should be employed to sustain an undue competition against any independent company or companies: be it enacted, That no such notice as hereinbefore mentioned, whether of revision or purchase, shall be given until provision shall have been made by Parliament, by an act or acts to be passed in that behalf, for autho-

(t) This act was made applicable to tramways in Ireland by 23 & 24 Vict. c. 152, post, and to railway companies incorporated by certificate of the Board of Trade

under "The Railways Construction Facilities Act, 1864," by that act, 27 & 28 Vict. c. 121, post.

(u) Founded on Third Report, 1844.

rizing the guarantee or the levy of the purchase-money hereinbefore mentioned, as the case may be, and for determining, subject to the conditions hereinbefore mentioned, the manner in which the said options or either of them shall be exercised; and that no bill for giving powers to exercise the said options, or either of them, shall be received in either house of Parliament, unless it be recited in the preamble to such bill, that three months' notice of the intention to apply to Parliament for such powers has been given by the said Lords Commissioners to the company or companies to be affected thereby.

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V. That from and after the commencement of the period of three years next preceding the period at which the option of revision or purchase becomes available, full and true accounts shall be kept of all sums of money received and paid on account of any railway within the provisions hereinbefore contained (distinguishing, if the said railway shall be a branch railway or one worked in common with other railways, the receipts, and giving an estimate of the expenses on account of the said railway, from those on account of the trunk line or other railways), by the directors of the company to whom such railway belongs, or by whom the same may be worked; and every such railway company shall once in every half year during the said period of three years cause a half-yearly account in abstract to be prepared, showing the total receipt and expenditure on account of the said railway for the half year ending the thirtieth day of June and the thirty-first day of December respectively, or such other convenient days as shall in each case be directed by the said Lords Commissioners, under distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified under the hands of two or more directors of the said railway company, and shall send a copy of the said account to the said Lords Commissioners on or before the last days of August and February respectively, or such other days as shall in each case be directed by the said Lords Commissioners, in each year; and it shall be lawful for the said Lords Commissioners, if and when they shall think fit, to appoint any proper person or persons to inspect the accounts and books of the said company during the said period of three years; and it shall be lawful for any person so authorized, at all reasonable times, upon producing his authority, to examine the books, accounts, vouchers and other documents of the company, at the principal office or place of business of the company, and to take copies or extracts therefrom.

Accounts to be kept, and to be open to inspection.

VI. And whereas it is expedient to secure to the poorer class of travellers the means of travelling by railway at moderate fares, and in carriages in which they may be protected from the weather (*x*); be it enacted, That on and after the several days hereinafter specified, all passenger railway companies which shall have been incorporated by any act of the present session, or which shall be hereafter incorporated, or which by any act of the present or any future session have obtained or shall obtain, directly or indirectly, any extension or amendment of the powers conferred on them respectively by their previous acts, or have been or shall be authorized to do any act unauthorized by the provisions of such previous acts, shall, by means of one train at the least, to travel along their railway from one end to the other of each trunk, branch or junction line belonging to or leased by them (*y*), so long as they shall continue to carry other passengers over such trunk, branch or junction line, once at the least each way on every week-day, except Christmas-day and Good Friday (such exception not to extend to Scotland), provide for the conveyance of third-class passengers to and from the terminal and other ordinary passenger stations of the railway, under the obligations contained in their several acts of Parliament, and with the immunities applicable by law to carriers of passengers by railway; and also under the following conditions; (that is to say,)

Companies to provide one cheap train each way daily.

Such train shall start at an hour to be from time to time fixed by the directors, subject to the approval of the Lords of the Committee of Privy Council for Trade and Plantations:

Such train shall travel at an average rate of speed not less than twelve miles an hour for the whole distance travelled on the railway, including stoppages:

Such train shall, if required, take up and set down passengers at every passenger station which it shall pass on the line:

The carriages in which passengers shall be conveyed by such train shall be provided with seats, and shall be protected from the weather, in a manner satisfactory to the Lords of the said committee:

The fare or charge for each third-class passenger by such train shall not exceed one penny for each mile travelled (*z*):

Each passenger by such train shall be allowed to take with him half-a-hundred weight of luggage, not being merchandize or other articles carried for hire or profit, without extra charge; and any excess of luggage shall be charged by weight, at a rate not exceeding the lowest rate of charge for passengers' luggage by other trains:

Children under three years of age, accompanying passengers by such train, shall be taken without any charge; and children of three years and upwards, but under twelve years of age, at half the charge for an adult passenger:

(*x*) Founded on Third Report, 1844.

(*z*) See ante, Ch. X., Sect. IV., and 21

(*y*) See *Attorney-General v. Oxford, W.*

& 22 Vict. c. 75, post.

& *W. R. Co.*, 31 L. J. (Exch.) 218.

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Penalty for non-compliance.

Board of Trade to have a discretionary power of allowing alternative arrangements.

When no tax to be levied.

Where companies run trains on the Sunday, cheap trains to be likewise provided.

Railway companies to afford additional facilities for the transmission of the mails.

1 & 2 Vict. c. 98, ante, p. 2.

Certain companies to convey military and police forces at certain charges.

5 & 6 Vict. c. 55, ante, p. 10.

And with respect to all railways subject to these obligations, which shall be open on or before the first day of November next, these obligations shall come into force on the said first day of November: and with respect to all other railways subject to these obligations, they shall come into force on the day of opening of the railway, or the day after the last day of the session in which the act shall be passed by reason of which the company will become subject thereunto, which shall first happen.

VII. That if any railway company shall refuse or wilfully neglect to comply with the provisions of this act as to the said cheap trains within a reasonable time, or shall attempt to evade the operation of such order, such company shall forfeit to her Majesty a sum not exceeding twenty pounds for every day during which such refusal, neglect or evasion shall continue.

VIII. Provided always, and be it enacted, That, except as to the amount of fare or charge for each passenger by such cheap trains, which shall in no case exceed the rates hereinbefore in such case provided, the Lords of the said committee shall have a discretionary power, upon the application of any railway company, of dispensing with any of the conditions hereinbefore required in regard to the conveyance of passengers by such cheap trains as aforesaid, in consideration of such other arrangements, either in regard to speed, covering from the weather, seats or other particulars, as to the Lords of the said committee shall appear more beneficial and convenient for the passengers by such cheap trains under the circumstances of the case, and shall be sanctioned by them accordingly; and any railway company which shall conform to such other conditions as shall be so sanctioned by the Lords of the said committee shall not be liable to any penalty for not observing the conditions which shall have been so dispensed with by the Lords of the said committee, in regard to the said cheap trains and the passengers conveyed thereby.

IX. That no tax shall be levied upon the receipts of any railway company from the conveyance of passengers at fares not exceeding one penny for each mile by any such cheap train as aforesaid (a).

X. That whenever any railway company subject to the hereinbefore-mentioned obligation of running cheap trains shall, from and after the days hereinbefore specified on which the said obligation is to accrue, run any train or trains on Sundays for the conveyance of passengers, it shall, under the obligations contained in its act or acts of Parliament, and with the immunities applicable by law to carriers of passengers by railway, by such train each way, on every Sunday, as shall stop at the greatest number of stations, provide sufficient carriages for the conveyance of third-class passengers at the terminal and other stations, at which such Sunday train may ordinarily stop; and the fare or charge for each third-class passenger by such train shall not exceed one penny for each mile travelled.

XI. And whereas by an act passed in the second year of the reign of her Majesty, intituled "An Act to provide for the Conveyance of the Mails by Railways," provision was made for the transmission of the mails by railway, and it is expedient that such provision should be extended (b); be it enacted, That it shall be lawful for the Postmaster-General to require, in the manner and subject to the conditions as to payment for service performed prescribed by the said act, that the mails be forwarded upon any such railway as is hereinbefore last mentioned at any rate of speed which the Inspector-General of Railways for the time being shall certify to be safe, not exceeding twenty-seven miles in the hour, including stoppages; and it shall be also lawful for the Postmaster-General to send any mail-guard with bags not exceeding the weight of luggage allowed to any other passenger (or subject to the general rules of the company for any excess of that weight) by any trains other than a mail train, upon the same conditions as any other passenger: Provided, that in such last-mentioned case nothing herein or in the last-recited act contained shall be construed to authorize the Postmaster-General to require the conversion of a regular mail train into an ordinary train, or to exercise any control over the company in respect of any ordinary train, nor shall the company be responsible for the safe custody or delivery of any mail bags so sent.

XII. And whereas by an act passed in the sixth year of the reign of her Majesty, intituled "An Act for the better Regulation of Railways, and for the Conveyance of Troops," it was among other things enacted, that, whenever it shall be necessary to move any of the officers or soldiers of her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition and other necessaries and things, to be conveyed at the usual hours of starting, at such prices, or upon such conditions as may from time to time be contracted for between the Secretary-at-War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance, signed by the proper authorities; and whereas it is expedient to amend such provision in regard to the prices and conditions of conveyance by any new railway, or any railway obtaining new powers from Parliament (c); be it enacted, That all railway companies which have been, or shall be incorporated by

(a) Ante, p. 19, note (z); and 26 & 27 Vict. c. 34, s. 14, post.

(b) Founded on Third Report, 1844.

(c) Founded on Third Report, 1844.

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any act of the present or any future session, or which by any act of the present or any future session shall have obtained, or shall obtain any extension or amendment of the powers conferred by their previous acts, or any of them, or have been or shall be authorized to do any act unauthorized by the provisions of such previous acts, shall be bound to provide such conveyance as aforesaid for the said military, marine and police forces, at fares not exceeding two-pence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first-class carriage, and not exceeding one penny for each mile for each soldier, marine or private of the militia or police force, and also for each wife, widow, or child above twelve years of age of a soldier, entitled by act of Parliament, or by competent authority, to be sent to their destination at the public expense, children under three years of age so entitled being taken free of charge, and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult; and such soldiers, marines and privates of the militia or police force, and their wives, widows and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather; provided, that every officer conveyed shall be entitled to take with him one hundred weight of personal luggage without extra charge, and every soldier, marine, private, wife or widow, shall be entitled to take with him or her half-a-hundred weight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than one halfpenny per pound, and all public baggage, stores, arms, ammunition and other necessaries and things, (except gunpowder and other combustible matters, which the company shall only be bound to convey at such prices and upon such conditions as may be from time to time contracted for between the Secretary-at-War and the company,) shall be conveyed at charges not exceeding two-pence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods (d).

XIII. And whereas electrical telegraphs have been established on certain railways, and may be more extensively established hereafter, and it is expedient to provide for their due regulation: be it enacted, That every railway company, on being required so to do by the Lords of the said committee, shall be bound to allow any person or persons authorized by the Lords of the said committee, with servants and workmen, at all reasonable times to enter into or upon their lands, and to establish and lay down upon such lands adjoining the line of such railway, a line of electrical telegraph for her Majesty's service, and to give to him and them every reasonable facility for laying down the same, and for using the same for the purpose of receiving and sending messages on her Majesty's service, subject to such reasonable remuneration to the company as may be agreed upon between the company and the Lords of the said committee, or in case of disagreement as may be settled by arbitration: Provided always, that, subject to a prior right of use thereof for the purposes of her Majesty, such telegraph may be used by the company for the purposes of the railway, upon such terms as may be agreed upon between the parties, or, in the event of difference, as may be settled by arbitration.

Companies to allow lines of electrical telegraph to be established.

XIV (e). That where a line of electrical telegraph shall have been established upon any railway by the company to whom such railway belongs, or by any company, partnership, person or persons, otherwise than exclusively for her Majesty's service, or exclusively for the purposes of the railway, or jointly for both, the use of such electrical telegraph, for the purpose of receiving and sending messages, shall, subject to the prior right of use thereof for the service of her Majesty and for the purposes of the company, and subject also to such equal charges and to such reasonable regulations as may be from time to time made by the said railway company, be open for the sending and receiving of messages by all persons alike, without favour or preference.

Electrical telegraph established by private parties to be open to the public.

XV. And whereas by an act passed in the fourth year of the reign of her Majesty, intituled "An Act to regulate Railways," power is given to the Lords of the said com-

Appointment of inspectors by Board of Trade.

(d) By 16 & 17 Vict. c. 69, s. 18, whenever it shall be necessary to move any of the officers or men in her Majesty's navy, or belonging to any naval coast volunteers, or any other officers or men under the command or government of the Admiralty, every railway company shall, upon the production of a route or order for the conveyance of such officers or men, signed by any officer or person authorized by the Lord High Admiral or Commissioners for executing the office of Lord High Admiral in that behalf, be bound to provide conveyance for such officers or men, and their personal luggage, and also any public bag-

gage, stores, arms, ammunition and other necessaries and things, by the railway of such company, at the usual hours of starting, in like manner and at the like fares and rates of charge, and upon the like conditions as under 7 & 8 Vict. c. 85, or any other act applicable to such company, such company would be bound to provide such conveyance for the officers and men of her Majesty's forces of the line, ordnance corps, marines, militia and police force, and their personal luggage, and any public baggage, stores, arms, ammunition and other necessaries and things of the said forces.

(e) Founded on Fifth Report, 1844.

3 & 4 Vict. c. 97, s. 5, ante, p. 7.

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Repealing provisions of 3 & 4 Vict. c. 97, s. 11.

If railway companies contravene or exceed the provisions of their acts, or of any general act, the Board of Trade to certify the same to the Attorney-General, &c., who shall proceed against them.

Notice to be given to the company.

mittee to appoint any proper person or persons to inspect any railway, and the stations, works and buildings, and the engines and carriages belonging thereto, and in order to carry the provisions of this act into execution, it is expedient that the said power be extended: be it enacted, That the said power given to the Lords of the said committee of appointing proper persons to inspect railways shall extend to authorize the appointment by the Lords of the said committee of any proper person or persons, for such purposes of inspection as are by the said act authorized, and also for the purpose of enabling the Lords of the said committee to carry the provisions of this and of the said act and of any general act relating to railways into execution; and that so much of the last-recited act as provides that no person shall be eligible to the appointment as inspector who shall, within one year of his appointment, have been a director, or have held any office of trust or profit under any railway company, shall be repealed: Provided always, that no person to be appointed as aforesaid shall exercise any powers of interference in the affairs of the company.

XVI. And whereas by the said act of the fourth year of the reign of her Majesty, intituled "An Act for regulating Railways," it is among other things enacted, that whenever it shall appear to the Lords of the said committee that any of the provisions of the several acts of Parliament regulating any railway companies, or the provisions of that act, have not been complied with on the part of any of the said companies or any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the Lords of the said committee shall certify the same to her Majesty's Attorney-General for England or Ireland, or to the Lord Advocate for Scotland, as the case may require; and thereupon the said Attorney-General or Lord Advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding (as the case may require), proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts: Provided always, that no such certificate as aforesaid shall be given by the Lords of the said committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to give the same: And whereas it is expedient that more effectual provision should be made, not only for enforcing a compliance on the part of railway companies with the provisions of their acts, but also for restraining railway companies from performing acts unauthorized by such provisions: be it enacted, That so much of the said act as is hereinbefore recited shall be repealed.

XVII (f). That whenever it shall appear to the Lords of the said committee that any of the provisions of the several acts of Parliament regulating any railway company, or the provisions of this act or of any general act relating to railways, have not been complied with on the part of any railway company or any of its officers, or that any railway company has acted or is acting in a manner unauthorized by the provision of the act or acts of Parliament relating to such railway, or in excess of the powers given and objects defined by the said act or acts, and it shall also appear to the Lords of the said committee that it would be for the public advantage that the company should be restrained from so acting, the Lords of the said committee shall certify the same to her Majesty's Attorney-General for England or Ireland, or to the Lord Advocate for Scotland, as the case may require; and thereupon the said Attorney-General or Lord Advocate shall, in case such default of the railway company shall consist of non-compliance with the provisions of the act or acts relating thereto or of this act, or of any general act relating to railways, proceed by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts; and in case the default of the railway company shall consist in the commission of some act or acts unauthorized by law, then the said Attorney-General or Lord Advocate, upon receiving such certificate as aforesaid, shall proceed by suit in equity, or such other legal proceeding as the nature of the case may require, to obtain an injunction or order (which the judge in equity or other judge to whom the application is made shall be authorized and required to grant, if he shall be of opinion that the act or acts of the railway company complained of is or are not authorized by law) to restrain the company from acting in such illegal manner, or to give such other relief as the nature of the case may require.

XVIII. Provided always, That no such certificate as aforesaid shall be given by the Lords of the said committee until twenty-one days after they shall have given notice to

(f) Founded on Fifth Report, 1844. In *Attorney-General v. Great Northern R. Co.*, 29 L. J. (Ch.) 794, it was held that the

right of the Attorney-General to sue a railway company for breach of their powers was not taken away by this statute.

the company against or in relation to whom they shall intend to give such certificate of their intention to give such certificate; and that no legal proceedings shall be commenced under the authority of the Lords of the said committee against any railway company for any offence against any of the several acts relating to railways or this act, or any general act relating to railways, except upon such certificate of the Lords of the said committee as aforesaid, and within one year after such offence shall have been committed.

XIX. And whereas many railway companies have borrowed money in a manner unauthorized by their acts of incorporation or other acts of Parliament relating to the said companies, upon the security of loan notes, or other instruments purporting to give a security for the repayment of the principal sums borrowed at certain dates, and for the payment of interest thereon in the meantime: And whereas such loan notes or other securities issued otherwise than under the provision of some act or acts of Parliament have no legal validity, and it is expedient that the issue of such illegal securities should be stopped; but such loan notes or other securities having been issued and received in good faith as between the borrower and lender, and for the most part for the lawful purposes of the undertaking, and in ignorance of their legal invalidity, it is expedient to confirm such as have been already issued (*g*); be it enacted, That from and after the passing of this act any railway company issuing any loan note or other negotiable or assignable instrument purporting to bind the company as a legal security for money advanced to the said railway company otherwise than under the provisions of some act or acts of Parliament authorizing the said railway company to raise such money and to issue such security, shall for every such offence forfeit to her Majesty a sum equal to the sum for which such loan note or other instrument purports to be such security: Provided always, that any company may renew any such loan note or other instrument issued by them prior to the passing of this act for any period or periods not exceeding five years from the passing of this act.

XX. That where any railway company, before the twelfth day of July, one thousand eight hundred and forty-four, shall have issued or contracted to issue any such loan notes or other unauthorized instruments, the company may and shall pay off such loan notes or other instruments as the same may fall due, subject as hereinbefore provided; and until the same shall be so paid off the said loan notes or other instruments shall entitle the holders thereof to the payment by the company of the principal sum and interest thereby agreed to be paid.

XXI. That a register of all such loan notes or other instruments shall be kept by the secretary; and such register shall be open, without fee or reward, at all reasonable times, to the inspection of any shareholder or auditor of the undertaking, and of every person interested in any such loan note or other instrument, desirous of inspecting the same.

XXII. And whereas the remedies now in force for the recovery of tithe commutation rent-charges are in many instances ineffectual for such parts thereof as are charged upon lands taken for the purposes of a railway, and it is therefore expedient to extend the said remedies when the said rent-charges may have been duly apportioned; be it enacted, That in all cases in which any such rent-charge, or part of any rent-charge, has been or hereafter shall be duly apportioned under the provisions of the acts for the commutation of tithes in England and Wales upon lands taken or purchased by any railway company for the purposes of such company, or upon any part of such lands, it shall be lawful for every person entitled to the said rent-charge or parts of such rent-charge, in case the same has been or shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day fixed for the payment thereof, to distrain for all arrears of the said rent-charge upon the goods, chattels and effects of the said company, whether on the land charged therewith, or any other lands, premises or hereditaments of such company, whether situated in the same parish or elsewhere, and to dispose of the distress when taken, and otherwise to demean himself in relation thereto, as any landlord may for arrears of rent reserved on a lease for years: Provided always, that nothing herein contained shall give or be construed to give a legal right to such rent-charge, when but for this act such rent-charge was not or could not be duly apportioned.

XXIII. That all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by some officer appointed for that purpose by the Lords of the said committee, shall for the purposes of this act be deemed to have been made by the Lords of the said committee; and all certificates of anything done by the Lords of the said committee in relation to this act, and certified copies of the minutes of proceedings or correspondence of the Lords of the said committee in relation thereto, signed by such officer, shall be deemed sufficient evidence thereof; and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same, or of the signature thereto, and service of the same at one of the principal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post, addressed to him at such office, shall be deemed good service upon the said company; and all notices, returns and other documents required by this act to be given to or laid before the Lords of the said committee, shall be delivered at or sent by post addressed to the office of the Lords of the said committee.

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Prosecutions to be under the sanction of the Board of Trade, and within one year after the offence.

Issue of loan notes and other illegal securities by railway companies prohibited.

Loan notes already issued may be renewed.

Loan notes already issued to be paid when due.

Register of loan notes.

Remedy for recovery of tithe-rent charged on railway land.

Communications to and from Board of Trade, service of notices &c.

APPENDIX.

Penalties.

XXIV. That all penalties under this act for the application of which no special provision is made shall be recovered in the name and for the use of her Majesty, and may be recovered in any of her Majesty's courts of record or in the Court of Session or in any of the sheriff courts in Scotland.

Interpretation of act.

XXV. That where the word "railway" is used in this act, it shall be construed to extend to railways constructed under the powers of any act of Parliament; and when the words "passenger railway" are used in this act, they shall be construed to extend to railways constructed under the powers of any act of Parliament upon which one-third or more of the gross annual revenue is derived from the conveyance of passengers by steam or other mechanical power; and whenever the word "company" is used in this act, it shall be construed to extend to include the proprietors for the time being of any such railway; and that where a different sense is not expressly declared, or does not appear by the context, every word importing the singular number or the masculine gender shall be taken to include females as well as males, and several persons and things as well as one person or thing.

8 & 9 VICT. CAP. 16.

An Act for consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a Public Nature (h). [8th May, 1845.]

The Companies
Clauses Consoli-
dation Act.

Whereas it is expedient to comprise in one general act sundry provisions relating to the constitution and management of joint-stock companies, usually introduced into acts of Parliament authorizing the execution of undertakings of a public nature by such companies, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this act shall apply to every joint-stock company which shall by any act which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the company which shall be incorporated by such act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively, and such clauses and provisions, as well as the clauses and provisions of every other act which shall be incorporated with such act, shall, save as aforesaid, form part of such act, and be construed together therewith as forming one act.

Act to apply to all
companies incor-
porated by acts
hereafter to be
passed.Interpretations in
this act.

II. And with respect to the construction of this act, and of other acts to be incorporated therewith, be it enacted as follows:—

"the special act;"

The expression "the special act" used in this act shall be construed to mean any act which shall be hereafter passed incorporating a joint-stock company for the purpose of carrying on any undertaking, and with which this act shall be so incorporated as aforesaid; and the word "prescribed," used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature, which shall by the special act be authorized to be executed.

"the under-
taking."Interpretations in
this and the
special act:

III. The following words and expressions, both in this and the special act, shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,)

number;

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number:

gender;

Words importing the masculine gender only shall include females:

"lands;"

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure:

"lease;"

The word "lease" shall include an agreement for a lease:

"month;"

The word "month" shall mean calendar month:

"superior
courts;"

The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require:

"oath;"

The word "oath" shall include affirmation in the case of quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

(h) See also "The Companies Clauses Act, 1863," 26 & 27 Vict. c. 118, post.

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The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town :	"county ;"
The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together in petty sessions :	"justice ;"
The expression "the company" shall mean the company constituted by the special act :	"two justices ;"
The expression "the directors" shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name :	"the company ;"
The word "shareholder" shall mean shareholder, proprietor, or member of the company ; and in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation : and	"directors ;"
The expression "the secretary" shall mean the secretary of the company, and shall include the word "clerk."	"shareholders ;"
IV. And be it enacted, That, in citing this act in other acts of Parliament and in legal instruments, it shall be sufficient to use the expression "The Companies Clauses Consolidation Act, 1845."	"secretary,"
V. And whereas it may be convenient in some cases to incorporate with acts of Parliament hereafter to be passed some portion only of the provisions of this act : Be it therefore enacted, That for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the clauses and provisions of this act, with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter), shall be incorporated with such act ; and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate (i).	Short title of the act.
And, with respect to the distribution of the capital of the company into shares, be it enacted as follows :—	Form in which portions of this act may be incorporated with other acts.
VI. The capital (j) of the company shall be divided into shares of the prescribed number and amount (k), and such shares shall be numbered in arithmetical progression, beginning with number 1 ; and every such share shall be distinguished by its appropriate number.	Distribution of Capital.
VII. All shares in the undertaking shall be personal estate, and transmissible as such, and shall not be of the nature of real estate (l).	Capital to be divided into shares.
VIII. Every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or shall otherwise have become entitled to a share in the company, and whose name shall have been entered on the register of shareholders hereinafter mentioned, shall be deemed a shareholder of the company (m).	Shares to be personal estate.
IX. The company shall keep a book, to be called the "Register of Shareholders ;" and in such book shall be fairly and distinctly entered, from time to time, the names of the several corporations, and the names and additions of the several persons entitled to shares in the company, together with the number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares, and the surnames or corporate names of the said shareholders (n), shall be placed in alphabetical order ; and such book shall be authenticated by the common seal of the company being affixed thereto (o) ; and such authentication shall be	Shareholders.
	Registry of shareholders.

(i) The usual contents of a special railway act are described, ante, 40, text.

(j) As to additional capital, see "The Companies Clauses Act, 1863," Part II., 26 & 27 Vict. c. 118, s. 12, post.

(k) *Seem*, that unless the special act specially directs what the amount of the share shall be, the company may, from time to time, alter the amount of the shares. *Ambergate R. Co. v. Mitchell*, 6 Rail. Cas. 238. The manner in which the register is made up is described, ante, 93, text.

(l) See remarks on this section, ante, 93, text, note (e).

(m) Ante, 93, text. An original subscriber may be registered without his consent, and although he has sold his scrip, ante, 90, text. See also when a change in the proposed undertaking will not relieve him from the liability to be registered, *ibid.*

(n) The mode of keeping the register, pointed out in this section, must be strictly observed. *Bain v. Whitehaven and Furness R. Co.*, 3 Ho. of Lords Cas. 2. What is an insufficient description, ante, 94, text.

(o) When the register consists of several volumes, the seal may be attached to the last, ante, 94, text.

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Addresses of
shareholders.

tion shall take place at the first ordinary meeting, or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company (*p*).

X. In addition to the said register of shareholders, the company shall provide a book, to be called the "Shareholders' Address Book," in which the secretary shall from time to time enter in alphabetical order the corporate names and places of business of the several shareholders of the company being corporations, and the surnames of the several other shareholders, with their respective christian names, places of abode and descriptions, so far as the same shall be known to the company; and every shareholder, or if such shareholder be a corporation, the clerk or agent of such corporation, may at all convenient times peruse such book *gratis*, and may require a copy thereof or of any part thereof: and for every hundred words so required to be copied, the company may demand a sum not exceeding sixpence.

Certificates of
shares to be is-
sued to the share-
holders.

XI. On demand of the holder of any share, the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder; and such certificate shall have the common seal of the company affixed thereto: and such certificate shall specify the share in the undertaking to which such shareholder is entitled; and the same may be according to the form in the Schedule (A.) to this act annexed, or to the like effect; and for such certificate the company may demand any sum not exceeding the prescribed amount, or, if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

Certificate to be
evidence.

XII. The said certificate shall be admitted in all courts as *prima facie* evidence of the title of such shareholder, his executors, administrators, successors or assigns, to the share therein specified; nevertheless, the want of such certificate shall not prevent the holder of any share from disposing thereof.

Certificate to be
renewed when
destroyed.

XIII. If any such certificate be worn out or damaged, then, upon the same being produced at some meeting of the directors, such directors may order the same to be cancelled, and thereupon another similar certificate shall be given to the party in whom the property of such certificate, and of the share therein mentioned, shall be at the time vested; or, if such certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the directors, a similar certificate shall be given to the party entitled to the certificate so lost or destroyed; and in either case a due entry of the substituted certificate shall be made by the secretary in the register of shareholders; and for every such certificate so given or exchanged the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

Transfer of
Shares.

And with respect to the transfer or transmission of shares (*q*), be it enacted as follows:—

Transfer of
shares to be by
deed duly
stamped.

XIV. Subject to the regulations herein or in the special act contained, every shareholder may sell and transfer all or any of his shares in the undertaking, or all or any part of his interest in the capital stock of the company, in case such shares shall, under the provision hereinafter contained, be consolidated into capital stock; and every such transfer (*r*) shall be by deed duly stamped (*s*), in which the consideration shall be duly stated; and such deed may be according to the form in the Schedule (B.) to this act annexed, or to the like effect.

Transfers of
shares to be re-
gistered, &c.

XV. The said deed of transfer (when duly executed) shall be delivered to the secretary, and be kept by him; and the secretary shall enter a memorial thereof in a book to be called the "Register of Transfers," and shall indorse such entry on the deed of transfer, and shall, on demand, deliver a new certificate to the purchaser (*t*); and for every such entry, together with such indorsement and certificate, the company may demand any sum not exceeding the prescribed amount, or, if no amount be prescribed, then a sum not exceeding two shillings and sixpence; and on the request of the purchaser of any share an indorsement of such transfer shall be made on the certificate of such share, instead of a new certificate being granted; and such indorsement, being signed by the secretary, shall be considered in every respect the same as a new certificate; and until such transfer (*u*) has been so delivered to the secretary as aforesaid, the vendor of the share shall continue liable to the company for any calls that may be made upon such share, and the purchaser of the share shall not be entitled to receive any share of the profits of the undertaking, or to vote in respect of such share.

Transfer not to
be made until
calls paid.

XVI. No shareholder shall be entitled to transfer any share, after any call shall have

(*p*) Ante, 93, text.

(*q*) See the chapter on "Railway Investments," ante, 87, text. As to cancellation and surrender of shares, see "The Companies Clauses Act, 1863," Part I., 26 & 27 Vict. c. 118, s. 4, post.

(*r*) On the subject of transfers of shares generally, ante, 106, text.

(*s*) Two or more proprietors of shares

may join in one transfer to the same purchaser, ante, 107, text.

(*t*) Whether a mandamus will lie to compel a transfer, ante, 112, text.

(*u*) If the purchaser neglects to have the transfer registered, the seller may take proceedings in equity, or at law, against him, ante, 111, text.

been made in respect thereof (*x*), until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him (*y*).

XVII. It shall be lawful for the directors to close the register of transfers for the prescribed period, or, if no period be prescribed, then for a period not exceeding fourteen days previous to each ordinary meeting, and they may fix a day for the closing of the same, of which seven days' notice shall be given by advertisement in some newspaper as after mentioned; and any transfer made during the time when the transfer books are so closed shall, as between the company and the party claiming under the same, but not otherwise, be considered as made subsequently to such ordinary meeting.

XVIII. If the interest in any share have become transmitted in consequence of the death (*z*) or bankruptcy or insolvency of any shareholder (*a*), or in consequence of the marriage of a female shareholder, or by any other lawful means than by a transfer according to the provisions of this or the special act, such transmission shall be authenticated by a declaration in writing as hereinafter mentioned, or in such other manner as the directors shall require (*b*); and every such declaration shall state the manner in which and the party to whom such share shall have been so transmitted, and shall be made and signed by some credible person before a justice, or before a Master or Master Extraordinary of the High Court of Chancery; and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register of shareholders; and for every such entry the company may demand any sum not exceeding the prescribed amount, and where no amount shall be prescribed, then not exceeding five shillings; and until such transmission has been so authenticated, no person claiming by virtue of any such transmission shall be entitled to receive any share of the profits of the undertaking, nor to vote in respect of any such share as the holder thereof.

XIX. If such transmission be by virtue of the marriage of a female shareholder, the said declaration shall contain a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share; and if such transmission have taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will or the letters of administration, or an official extract therefrom, shall, together with such declaration, be produced to the secretary; and upon such production in either of the cases aforesaid the secretary shall make an entry of the declaration in the said register of transfers.

XX. The company shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any of the said shares may be subject (*c*); and the receipt of the party in whose name any such share shall stand in the books of the company, or, if it stands in the names of more parties than one, the receipt of one of the parties named in the register of shareholders, shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of such share, notwithstanding any trusts to which such share may then be subject, and whether or not the company have had notice of such trusts; and the company shall not be bound to see to the application of the money paid upon such receipt.

And with respect to the payment of subscriptions, and the means of enforcing the payment of calls, be it enacted as follows:—

XXI. The several persons who have subscribed any money towards the undertaking, or their legal representatives, respectively (*d*), shall pay the sums respectively so subscribed, or such portion thereof as shall from time to time be called for by the company, at such times and places as shall be appointed by the company; and with respect to the provisions herein or in the special act contained for enforcing the payment of calls, the word "shareholder" shall extend to and include the legal personal representatives of such shareholder (*e*).

XXII. It shall be lawful for the company (*f*) from time to time to make such calls (*g*) of money upon the respective shareholders, in respect of the amount of capital respectively subscribed or owing by them, as they shall think fit, provided that twenty-one days notice at the least be given of each call (*h*), and that no call exceed the prescribed

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Closing of transfer books.

Transmission of shares by other means than transfer to be authenticated by a declaration.

Proof of transmission by marriage, will, &c.

Company not bound to regard trusts.

Payment of Calls.

Subscriptions to be paid when called for.

Power to make calls.

(*x*) When a call is said to be made, ante, 96, text.

(*y*) The call must be paid before the transfer is executed, as the company may refuse to register the transfer, although the purchaser offers to pay the calls due, ante, 111, text.

(*z*) On this subject, see ante, 113, text.

(*a*) The effect of the bankruptcy of a shareholder is described, ante, 95, text.

(*b*) If the assignees of a bankrupt refuse to accept shares, the certificate does not discharge the bankrupt from the payment

of calls subsequently made, ante, 104, text.

(*c*) Ante, 106, text.

(*d*) Who is a subscriber within this section, ante, 101, text.

(*e*) If shares not paid up are bequeathed, when the calls are to be paid out of the testator's estate, ante, 106, text.

(*f*) The directors are the proper persons to make the call, ante, 97, text.

(*g*) When the call is said to be made, ante, 97, text.

(*h*) *In re Jennings*, 1 Irish Eq. R. 654, N. S., it was decided, according to the ruling

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- amount, if any, and that successive calls be not made at less than the prescribed interval, if any, and that the aggregate amount of calls made in any one year do not exceed the prescribed amount, if any; and every shareholder shall be liable to pay the amount of the calls so made, in respect of the shares held by him, to the persons and at the times and places from time to time appointed by the company.
- XXIII. If, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate allowed by law from the day appointed for the payment thereof to the time of the actual payment.
- XXIV. It shall be lawful for the company, if they think fit, to receive from any of the shareholders willing to advance the same, all or any part of the monies due upon their respective shares beyond the sums actually called for; and upon the principal monies so paid in advance, or so much thereof as from time to time shall exceed the amount of the calls then made upon the shares in respect of which such advance shall be made, the company may pay interest at such rate, not exceeding the legal rate of interest for the time being, as the shareholder paying such sum in advance and the company shall agree upon.
- XXV. If at the time appointed by the company for the payment of any call, any shareholder fail to pay the amount of such call, it shall be lawful for the company to sue such shareholder for the amount thereof in any court of law or equity having competent jurisdiction, and to recover the same, with lawful interest, from the day on which such call was payable (*i*).
- XXVI. In any action or suit to be brought by the company against any shareholder to recover any money due for any call, it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare (*k*), that the defendant is the holder of one share or more in the company, (stating the number of shares,) and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more upon one share or more, (stating the number and amount of each of such calls,) whereby an action hath accrued to the company by virtue of this and the special act (*l*).
- XXVII. On the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call was a holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given as is directed by this or the special act; and it shall not be necessary to prove the appointment of the directors who made such call, nor any other matter whatsoever (*m*); and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear either that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period.
- XXVIII. The production of the register of shareholders shall be *prima facie* evidence (*n*) of such defendant being a shareholder, and of the number and amount of his shares.
- And with respect to the forfeiture (*o*) of shares for non-payment of calls, be it enacted as follows:—
- XXIX. If any shareholder fail to pay any call payable by him, together with the interest, if any, that shall have accrued thereon, the directors, at any time after the expiration of two months from the day appointed for payment of such call, may declare the share in respect of which such call was payable forfeited, and that whether the company have sued for the amount of such call, or not (*p*).
- XXX. Before declaring any share forfeited, the directors shall cause notice of such intention to be left at or transmitted by the post to the usual or last place of abode of the person appearing by the register of shareholders to be the proprietor of such share; and if the holder of any such share be abroad, or if his usual or last place of abode be not in the English courts (ante, 99, text,) that calls, payable by instalments, may be enforced; and also that the day appointed for the payment of the last instalment may be deemed the day on which the call is payable, and that twenty-one days' notice previous thereto is a valid notice within the above section.
- (*i*) As to the right of the company to set off claims for calls, in answer to an action brought against them for plaintiff's services, ante, 100, text, note (*s*).
- (*k*) See the form of the declaration, and the cases on this section, post, tit. *Forms*.
- (*l*) It seems that this section is applicable to cases where calls on shares are made the subject of a plea of set-off; *Moore v. Metropolitan Sewage Manure Co.*, 3 Ex. 333.
- (*m*) What pleas are allowed, and what defences may be set up under them, ante, 101, text.
- (*n*) But the defendant may show that he was wrongfully put upon the register, ante, 101, text.
- (*o*) As to the cancellation of forfeited shares, see "The Companies Clauses Act, 1863," 26 & 27 Vict. c. 118, s. 4, post.
- (*p*) This is cumulative to the power to sue for calls, but the value of the forfeited shares must be deducted, ante, 114, text.

Interest to be paid on calls unpaid.

Power to allow interest on payment of subscriptions before call.

Enforcement of calls by action.

Declaration in action for calls.

Matter to be proved in action for calls.

Proof of proprietorship.

Non-payment of Calls.

Forfeiture of shares for non-payment of calls.

Notice of forfeiture to be given before declaration thereof.

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known to the directors, by reason of its being imperfectly described in the Shareholders' Address Book, or otherwise, or if the interest in any such share shall be known by the directors to have become transmitted otherwise than by transfer, as hereinbefore mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted, or may for the time being belong, shall not be known to the directors, the directors shall give public notice of such intention in the London or Dublin Gazette, according as the company's principal place of business shall be situate in England or Ireland, and also in some newspaper, as after mentioned; and the several notices aforesaid shall be given twenty-one days at least before the directors shall make such declaration of forfeiture.

XXXI. The said declaration of forfeiture shall not take effect so as to authorize the sale or other disposition of any share until such declaration shall have been confirmed at some general meeting of the company, to be held after the expiration of two months at the least from the day on which such notice of intention to make such declaration of forfeiture shall have been given; and it shall be lawful for the company to confirm such forfeiture at any such meeting, and by an order at such meeting, or at any subsequent general meeting, to direct the share so forfeited to be sold or otherwise disposed of.

XXXII. After such confirmation as aforesaid, it shall be lawful for the directors to sell the forfeited share, either by public auction or private contract, and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit; and any shareholder may purchase any forfeited share so sold (q).

XXXIII. A declaration in writing, by some credible person not interested in the matter, made before any justice, or before any Master or Master Extraordinary of the High Court of Chancery, that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner hereinbefore required, shall be sufficient evidence of the facts therein stated; and such declaration, and the receipt of the treasurer of the company for the price of such share, shall constitute a good title to such share; and a certificate of proprietorship shall be delivered to such purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase; and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

XXXIV. The company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture; and if the money produced by the sale of any such forfeited shares be more than sufficient to pay all arrears of calls and interest thereon due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall, on demand, be paid to the defaulter.

XXXV. If payment of such arrears of calls and interest and expenses be made before any share so forfeited and vested in the Company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, in such manner as if such calls had been duly paid.

And with respect to the remedies of creditors of the company against the shareholders (r), be it enacted as follows:—

XXXVI. If any execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy such execution, then such execution may be issued against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up: Provided always, that no such execution shall issue against any shareholder except upon an order of the court in which the action, suit or other proceeding shall have been brought or instituted, made upon motion in open court after sufficient notice in writing to the persons sought to be charged (s); and upon such motion such court may order execution to issue accordingly; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

XXXVII. If by means of any such execution any shareholder shall have paid any sum of money beyond the amount then due from him in respect of calls, he shall forthwith be reimbursed such additional sum by the directors out of the funds of the company.

And with respect to the borrowing of money by the company on mortgage or bond (t), be it enacted as follows:—

XXXVIII. If the company be authorized by the special act to borrow money on

Forfeiture to be confirmed by a general meeting.

Sale of forfeited shares.

Evidence as to forfeiture of shares.

No more shares to be sold than sufficient for payment of calls.

On payment of calls before sale, the forfeited shares to revert.

Remedies against Shareholders.

Execution against shareholders to the extent of their shares in capital not paid up.

Reimbursement of such shareholders.

Power to borrow money.

(q) The owner of the forfeited shares, if sued for calls, is entitled to the benefit of the sale of the shares, ante, 114, text.

(r) On this subject generally, see ante, 84, 128, text.

(s) The proper mode of proceeding is by

scire facias, ante, 84, text.

(t) On this subject generally, see ante, 126, text. As to Debenture Stock, see "The Companies Clauses Act, 1863," Part III., 26 & 27 Vict. c. 118, s. 22, post.

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Power to re-borrow.	mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the company, be authorized to be borrowed, not exceeding in the whole the sum prescribed by the special act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned. XXXIX. If, after having borrowed any part of the money so authorized to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time; but such power of reborrowing shall not be exercised without the authority of a general meeting of the company, unless the money be so reborrowed in order to pay off any existing mortgage or bond.
Evidence of authority for borrowing.	XL. Where by the special act the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed or paid up, or where by this or the special act the authority of a general meeting is required for such borrowing, the certificate of a justice that such definite portion of the capital has been subscribed or paid up, and a copy of the order of a general meeting of the company authorizing the borrowing of any money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having been made; and upon production to any justice of the books of the company, and of such other evidence as he shall think sufficient, such justice shall grant the certificate aforesaid.
Mortgages and bonds to be stamped.	XLI. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated; and every such mortgage deed or bond may be according to the form in the Schedule (C.) or (D.) to this act annexed, or to the like effect (u).
Rights of mortgagees.	XLII. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorized (x).
Application of calls, notwithstanding mortgage.	XLIII. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company.
Rights of obligees.	XLIV. The respective obligees in such bonds shall, proportionally according to the amount of the monies secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorized, or otherwise howsoever (y).
Register of mortgages and bonds.	XLV. A register of mortgages and bonds shall be kept by the secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond, and the sums secured thereby, and the names of the parties thereto, with their proper additions, shall be made in such register; and such register may be perused at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the company, or by any person interested in any such mortgage or bond, without fee or reward.
Transfers of mortgages and bonds to be stamped.	XLVI. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in Schedule (E.) to this act annexed, or to the like effect.
Transfers of mortgages and bonds to be registered.	XLVII. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects; and no party, having made such transfer, shall have power to make void, release or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.
Payment of interest on monies borrowed.	XLVIII. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and, if no period be appointed,

(u) As to the legal and equitable rights and remedies of mortgagees and bond creditors, ante, 128, text.

(x) On the effect of this provision, see

ante, 127, text.

(y) See the effect of this provision considered, and the cases thereon, ante, 128, text.

half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company.

XLIX. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped.

L. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company (z).

LI. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months' previous notice for that purpose; and in the like case the company may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the London or Dublin Gazette, according as the principal office of the company shall be in England or Ireland, and in some newspaper as after mentioned.

LII. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond, unless on demand of payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

LIII. Where by the special act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and, after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts of law or equity, require the appointment of a receiver, by an application to be made as hereinafter provided: and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum alone, or, if his debt does not amount to the prescribed sum, he may, in conjunction with other mortgagees whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided (a).

LIV. Every application for a receiver in the cases aforesaid shall be made to two justices, and on any such application it shall be lawful for such justices, by order in writing, after hearing the parties, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made, all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed; and after such interest and costs, or such principal, interest and costs, have been so received, the power of such receiver shall cease.

LV. At all seasonable times the books of accounts of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom, without fee or reward.

APPENDIX.

Transfers of interest to be stamped.

Repayment of money borrowed at a time fixed.

Repayment of money borrowed, where no time fixed.

Interest to cease on expiration of notice to pay off mortgage or bond.

Arrears of interest, when to be enforced by appointment of a receiver.

Arrears of principal and interest.

Appointment of receiver.

Access to account books by mortgagees.

(z) When actions at law may be maintained by mortgagees or bond creditors, ante, 128, text. And when the remedy is only in equity, ante, 129, text.

(a) When a receiver may be appointed, and as to his duties, ante, 133, text. As to his rights and liabilities when an execution

creditor is in possession of the company's effects, ante, 134, text. As to the liabilities of the sheriff, as against a receiver, ante, 134, text. When the courts of equity will interfere to protect the sheriff, ante, 135, text.

APPENDIX.

Loans.

Power to convert loan into capital.

New shares to be considered same as original shares.

If old shares at premium, new shares to be offered to the shareholders.

Shares to vest in the parties accepting; otherwise to be disposed of by the directors.

If not at a premium, to be issued as company think fit.

Consolidation of Shares.

Power to consolidate shares into stock.

Proprietors of stock may transfer the same.

Register of stock.

Proprietors of stock entitled to dividends.

And with respect to the conversion of the borrowed money into capital, be it enacted as follows :—

LVI. It shall be lawful for the company, if they think fit, unless it be otherwise provided by the special act, to raise the additional sum so authorized to be borrowed, or any part thereof, by creating new shares of the company, instead of borrowing the same, or having borrowed the same, to continue at interest only a part of such additional sum, and to raise part thereof by creating new shares ; but no such augmentation of capital as aforesaid shall take place without the previous authority of a general meeting of the company.

LVII. The capital so to be raised by the creation of new shares shall be considered as part of the general capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on nonpayment of calls, or otherwise, as if it had been part of the original capital, except as to the times of making calls for such additional capital, and the amount of such calls, which respectively it shall be lawful for the company from time to time to fix as they shall think fit.

LVIII. If at the time of any such augmentation of capital taking place by the creation of new shares the then existing shares be at a premium, or of greater actual value than the nominal value thereof, then, unless it be otherwise provided by the special act, the sum so to be raised shall be divided into shares of such amount as will conveniently allow the same to be apportioned among the then shareholders in proportion to the existing shares held by them respectively ; and such new shares shall be offered to the then shareholders in the proportion aforesaid ; and such offer shall be made by letter under the hand of the secretary given to, or sent by post addressed to, each shareholder according to his address in the Shareholders' Address Book, or left at his usual or last place of abode.

LIX. The said new shares shall vest in and belong to the shareholders who shall accept the same, and pay the value thereof to the company at the time and by the instalments which shall be fixed by the company ; and if any shareholder fail for one month after such offer of new shares to accept the same, and pay the instalments called for in respect thereof, it shall be lawful for the company to dispose of such shares in such manner as they shall deem most for the advantage of the company.

LX. If at the time of such augmentation of capital taking place the existing shares be not at a premium, then such new shares may be of such amount, and may be issued in such manner and on such terms, as the company shall think fit.

And with respect to the consolidation of the shares into stock, be it enacted as follows :—

LXI. It shall be lawful for the company from time to time, with the consent of three-fifths of the votes of the shareholders present in person or by proxy at any general meeting of the company, when due notice for that purpose shall have been given, to convert or consolidate all or any part of the shares then existing in the capital of the company, and in respect whereof the whole money subscribed shall have been paid up, into a general capital stock, to be divided amongst the shareholders, according to their respective interests therein.

LXII. After such conversion or consolidation shall have taken place, all the provisions contained in this or the special act which require or imply that the capital of the company shall be divided into shares of any fixed amount, and distinguished by numbers, shall, as to so much of the capital as shall have been so converted or consolidated into stock, cease and be of no effect, and the several holders of such stock may thenceforth transfer their respective interests therein, or any parts of such interests, in the same manner and subject to the same regulations and provisions as or according to which any shares in the capital of the company might be transferred under the provisions of this or the special act ; and the company shall cause an entry to be made in some book, to be kept for that purpose, of every such transfer ; and for every such entry they may demand any sum not exceeding the prescribed amount, or, if no amount be prescribed, a sum not exceeding two shillings and sixpence.

LXIII. The company shall from time to time cause the names of the several parties who may be interested in any such stock as aforesaid, with the amount of the interest therein possessed by them respectively, to be entered in a book to be kept for the purpose, and to be called "The Register of Holders of Consolidated Stock ;" and such book shall be accessible at all seasonable times to the several holders of shares or stock in the undertaking.

LXIV. The several holders of such stock shall be entitled to participate in the dividends and profits of the company, according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages, for the purpose of voting at meetings of the company, qualification for the office of directors, and for other purposes, as would have been conferred by shares of an equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any aliquot part of such

amount of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages respectively.

LXV. And be it enacted, That all the money raised by the company, whether by subscriptions of the shareholders, or by loan or otherwise, shall be applied, firstly, in paying the costs and expenses incurred in obtaining the special act, and all expenses incident thereto; and, secondly, in carrying the purposes of the company into execution.

And with respect to the general meetings of the company, and the exercise of the right of voting by the shareholders, be it enacted as follows (b):—

LXVI. The first general meeting of the shareholders of the company shall be held within the prescribed time, or, if no time be prescribed, within one month after the passing of the special act, and the future general meetings shall be held at the prescribed periods, and if no periods be prescribed, in the months of February and August in each year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting; and the meetings so appointed to be held as aforesaid shall be called "ordinary meetings;" and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and if no place be prescribed, then at some place to be appointed by the directors.

LXVII. No matters, except such as are appointed by this or the special act to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters have been given in the advertisement convening such meeting (c).

LXVIII. Every general meeting of the shareholders, other than an ordinary meeting, shall be called an "extraordinary meeting;" and such meetings may be convened by the directors at such times as they think fit.

LXIX. No extraordinary meeting shall enter upon any business not set forth in the notice upon which it shall have been convened.

LXX. It shall be lawful for the prescribed number of shareholders, holding in the aggregate shares to the prescribed amount, or, where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one-tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company; and such requisition shall fully express the object of the meeting required to be called, and shall be left at the office of the company, or given to at least three directors, or left at their last or usual places of abode; and forthwith upon the receipt of such requisition the directors shall convene a meeting of the shareholders; and if for twenty-one days after such notice the directors fail to call such meeting, the prescribed number, or such other number as aforesaid, of shareholders, qualified as aforesaid, may call such meeting, by giving fourteen days' public notice thereof.

LXXI. Fourteen days' public notice at the least of all meetings, whether ordinary or extraordinary, shall be given by advertisement, which shall specify the place, the day, and the hour of meeting; and every notice of an extraordinary meeting, or of an ordinary meeting, if any other business than the business hereby or by the special act appointed for ordinary meetings is to be done thereat, shall specify the purpose for which the meeting is called (d).

LXXII. In order to constitute a meeting, (whether ordinary or extraordinary,) there shall be present, either personally or by proxy, the prescribed quorum, and if no quorum be prescribed, then shareholders holding in the aggregate not less than one-twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders, holding not less than one-twentieth of the capital of the company, shall be the quorum; and if within one hour from the time appointed for such meeting the said quorum be not present, no business shall be transacted at the meeting other than the declaring of a dividend, in case that shall be one of the objects of the meeting, but such meeting shall, except in the case of a meeting for the election of directors, hereinafter mentioned, be held to be adjourned *sine die*.

LXXIII. At every meeting of the company one or other of the following persons shall preside as chairman; that is to say, the chairman of the directors, or in his absence the deputy chairman (if any), or in the absence of the chairman and deputy chairman some one of the directors of the company to be chosen for that purpose by the meeting, or in the absence of the chairman and deputy chairman and of all the directors, any shareholder to be chosen for that purpose by a majority of the shareholders present at such meeting.

LXXIV. The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only; and every such meeting may be adjourned from

APPENDIX.

Application of capital.

General Meetings.

Ordinary meetings to be held half-yearly.

Business at ordinary meetings.

Extraordinary meetings.

Business at extraordinary meetings.

Extraordinary meetings may be required by shareholders.

Notice of meetings.

Quorum for a general meeting.

Chairman at general meetings.

Business at meetings and adjournments.

(b) See this subject considered, ante, 41, text.

necessity of due notice, ante, 42, text, note (m), and 47, note (c).

(c) A meeting may be both general and special, ante, 42, text, note (l); as to the

(d) See the cases on this subject, ante, 42, text, and 47, note (c).

APPENDIX.

Votes of shareholders.

time to time, and from place to place; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

LXXV. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares: Provided always, that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him.

Manner of voting.

LXXVI. The votes may be given either personally or by proxies (*e*), being shareholders, authorized by writing according to the form in the Schedule (F.) to this act annexed, or in a form to the like effect, under the hand of the shareholder nominating such proxy, or, if such shareholder be a corporation, then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes.

Regulations as to proxies.

LXXVII. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy have been transmitted to the secretary of the company the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used.

Votes of joint shareholders.

LXXVIII. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof; and on all occasions the vote of such first-named shareholder, either in person or by proxy, shall be allowed as the vote in respect of such share, without proof of the concurrence of the other holders thereof.

Votes of lunatics and minors, &c.

LXXIX. If any shareholder be a lunatic or idiot, such lunatic or idiot may vote by his committee; and if any shareholder be a minor, he may vote by his guardian or any one of his guardians; and every such vote may be given either in person or by proxy.

Proof of a particular majority of votes only required in the event of a poll being demanded.

LXXX. Whenever in this or the special act the consent of any particular majority of votes at any meeting of the company is required in order to authorize any proceeding of the company, such particular majority shall only be required to be proved in the event of a poll being demanded at such meeting (*f*); and if such poll be not demanded, then a declaration by the chairman that the resolution authorizing such proceeding has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient authority for such proceeding without proof of the number or proportion of votes recorded in favour of or against the same.

Appointment and Rotation of Directors.

And with respect to the appointment and rotation of directors, be it enacted as follows (*g*):—

Number of directors.

LXXXI. The number of directors shall be the prescribed number.

Power to vary the number of directors.

LXXXII. Where the company shall be authorized by the special act to increase or to reduce the number of the directors, it shall be lawful for the company from time to time, in general meeting, after due notice for that purpose, to increase or reduce the number of the directors within the prescribed limits, if any, and to determine the order of rotation in which such reduced or increased number shall go out of office, and what number shall be a quorum at their meetings.

Election of directors.

LXXXIII. The directors appointed by the special act shall, unless thereby otherwise provided, continue in office until the first ordinary meeting to be held in the year next after that in which the special act shall have passed; and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by the special act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the special act being eligible as members of such new body (*h*); and at the first ordinary meeting to be held every year thereafter the shareholders present, personally or by proxy, shall elect persons to supply the places of the directors then retiring from office, agreeably to the provisions hereinafter contained; and the several persons elected at any such meeting, being neither removed nor disqualified, nor having resigned, shall continue to be directors until others are elected in their stead, as hereinafter mentioned.

Existing directors continued on failure of meeting for election of directors.

LXXXIV. If at any meeting at which an election of directors ought to take place the prescribed quorum shall not be present within one hour from the time appointed for the meeting, no election of directors shall be made, but such meeting shall stand adjourned

(*e*) As to proxies and the necessary stamp thereon, ante, 43, text.

(*f*) How long the poll is to be kept open, ante, 45, text, note (*r*).

(*g*) The proper mode of voting for direc-

tors is considered, ante, 45, text, note (*r*).

(*h*) As to the mode of proceeding to set aside an illegal election, ante, 45, 47, text.

to the following day at the same time and place; and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting, the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year.

LXXXV. No person shall be capable of being a director unless he be a shareholder, nor unless he be possessed of the prescribed number (if any) of shares; and no person holding an office or place of trust or profit under the company, or interested in any contract with the company (*i*), shall be capable of being a director; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director.

LXXXVI. If any of the directors at any time subsequently to his election accept or continue to hold any other office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or if such director at any time cease to be a holder of the prescribed number of shares in the company, then in any of the cases aforesaid the office of such director shall become vacant, and thenceforth he shall cease from voting or acting as a director (*k*).

LXXXVII. Provided always, that no person, being a shareholder or member of any incorporated joint-stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint-stock company and the company incorporated by the special act; but no such director, being a shareholder or member of such joint-stock company, shall vote on any question as to any contract with such joint-stock company.

LXXXVIII. The directors appointed by the special act, and continued in office as aforesaid, or the directors elected to supply the places of those retiring as aforesaid, shall, subject to the provision hereinbefore contained for increasing or reducing the number of directors, retire from office at the times and in the proportions following, the individuals to retire being in each instance determined by ballot among the directors, unless they shall otherwise agree; (that is to say,)

At the end of the first year after the first election of directors, the prescribed number, and, if no number be prescribed, one-third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office.

At the end of the second year the prescribed number, and, if no number be prescribed, one-half of the remaining number of such directors, to be determined in like manner, shall go out of office.

At the end of the third year the prescribed number, and, if no number be prescribed, the remainder of such directors, shall go out of office.

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders; and at the first ordinary meeting in every subsequent year, the prescribed number, and, if no number be prescribed, one-third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner; nevertheless, every director so retiring from office may be re-elected immediately or at any future time, and after such re-election shall, with reference to the going out by rotation, be considered as a new director: Provided always, that, if the prescribed number of directors be some number not divisible by three, and the number of directors to retire be not prescribed, the directors shall in each case determine what number of directors, as nearly one-third as may be, shall go out of office, so that the whole number shall go out of office in three years.

LXXXIX. If any director die, or resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation as aforesaid, the remaining directors, if they think proper so to do, may elect in his place some other shareholder, duly qualified, to be a director (*l*); and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.

And with respect to the powers of the directors, and the powers of the company to be exercised only in general meeting, be it enacted as follows:—

XC. The directors shall have the management and superintendence of the affairs of the company (*m*), and they may lawfully exercise all the powers of the company (*n*), except as to such matters as are directed by this or the special act to be transacted by a general meeting of the company, but all the powers so to be exercised shall be exercised in accord-

APPENDIX

Qualification of directors.

Cases in which office of director shall become vacant.

Shareholder of an incorporated joint-stock company not disqualified by reason of contracts.

Rotation of directors.

Supply of occasional vacancies in office of directors.

Powers of Directors.

Powers of the company to be exercised by the directors.

(*i*) The contract is valid, although a director be interested. *Foster v. Oxford and Wolverhampton R. Co.*, 22 Law J. (C. P.) 99, and ante, 45, text.

(*k*) See the cases on this section, ante,

45, text.

(*l*) See ante, 46, text.

(*m*) See this subject generally considered, ante, 48, text, and following pages.

(*n*) See the Section "On the Jurisdiction

APPENDIX.

Powers of the company not to be exercised by the directors.

Proceedings of Directors.

Meetings of directors.

Permanent chairman of directors.

Occasional chairman of directors.

Committees of directors.

Powers of committees.

Meetings of committees.

Contracts by committee or directors how to be entered into.

ance with and subject to the provisions of this and the special act; and the exercise of all such powers shall be subject also to the control and regulation of any general meeting specially convened for the purpose, but not so as to render invalid any act done by the directors prior to any resolution passed by such general meeting.

XCI. Except as otherwise provided by the special act, the following powers of the company (that is to say), the choice and removal of the directors, except as hereinbefore mentioned, and the increasing or reducing of their number where authorized by the special act, the choice of auditors, the determination as to the remuneration of the directors, auditors, treasurer and secretary, the determination as to the amount of money to be borrowed on mortgage, the determination as to the augmentation of capital, and the declaration of dividends, shall be exercised only at a general meeting of the company.

And with respect to the proceedings and liabilities of the directors, be it enacted as follows (o):—

XCII. The directors shall hold meetings at such times as they shall appoint for the purpose, and they may meet and adjourn as they think proper, from time to time, and from place to place (p); and at any time any two of the directors may require the secretary to call a meeting of the directors, and in order to constitute a meeting of directors, there shall be present at the least the prescribed quorum, and when no quorum shall be prescribed, there shall be present at least one-third of the directors; and all questions at any such meeting shall be determined by the majority of votes of the directors present, and in case of an equal division of votes, the chairman shall have a casting vote in addition to his vote as one of the directors.

XCIII. At the first meeting of directors held after the passing of the special act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting shall choose one of the directors to act as chairman of the directors for the year following such choice, and shall also, if they think fit, choose another director to act as deputy-chairman for the same period; and if the chairman or deputy-chairman die or resign, or cease to be a director, or otherwise become disqualified to act, the directors present at the meeting next after the occurrence of such vacancy shall choose some other of the directors to fill such vacancy; and every such chairman or deputy-chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such death, resignation, removal, or disqualification had not happened.

XCIV. If at any meeting of the directors neither the chairman nor deputy-chairman be present, the directors present shall choose some one of their number to be chairman of such meeting.

XCV. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit, within the prescribed limits, if any, and they may grant to such committees respectively power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to entrust to them.

XCVI. The said committees may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers entrusted to them except at a meeting at which there shall be present the prescribed quorum, or, if no quorum be prescribed, then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote, in addition to his vote as a member of the committee.

XCVII. The power which may be granted to any such committee to make contracts, as well as the power of the directors to make contracts on behalf of the company, may lawfully be exercised as follows (q); (that is to say,)

With respect to any contract which, if made between private persons, would be by law required to be in writing and under seal (r), such committee or the directors may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same.

With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same.

exercised by the Courts, to prevent Directors or Shareholders from exceeding their Powers," ante, 62, text.

(o) See Chapter III., ante, 39, text.

(p) As to the notices of such meetings,

ante, 47, text, note (c).

(q) See the Section on "The Power of Directors to enter into Contracts," ante, 48, text.

(r) Ante, 50, text, note (n).

With respect to any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same.

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors or administrators, as the case may be; and on any default in the execution of any such contract, either by the company or any other party thereto, such actions or suits may be brought, either by or against the company, as might be brought had the same contracts been made between private persons only (*s*).

XCVIII. The directors shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books, to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors (*t*); and every such entry shall be signed by the chairman of such meeting: and such entry, so signed, shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such respective meetings have been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders or directors or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed until the contrary be proved.

XCIX. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

C. No director, by being party to or executing in his capacity of director any contract, or other instrument on behalf of the company, or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever (*u*); and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors and administrators, shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid (if any).

And with respect to the appointment and duties of auditors, be it enacted as follows (*x*):—

CI. Except where by the special act auditors shall be directed to be appointed otherwise than by the company, the company shall, at the first ordinary meeting after the passing of the special act, elect the prescribed number of auditors, and, if no number is prescribed, two auditors, in like manner as is provided for the election of directors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office, according to the provision hereinafter contained; and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead.

CII. Where no other qualification shall be prescribed by the special act, every auditor shall have at least one share in the undertaking; and he shall not hold any office in the company, nor be in any other manner interested in its concerns, except as a shareholder.

CIII. One of such auditors (to be determined in the first instance by ballot between themselves, unless they shall otherwise agree, and afterwards by seniority) shall go out of office at the first ordinary meeting in each year; but the auditor so going out shall be immediately re-eligible, and after any such re-election shall, with respect to the going out of office by rotation, be deemed a new auditor.

CIV. If any vacancy takes place among the auditors in the course of the current year, then at any general meeting of the company the vacancy may, if the company think fit, be supplied by election of the shareholders.

CV. The provision of this act respecting the failure of an ordinary meeting at which

APPENDIX.

Proceedings to be entered in a book, and to be evidence.

Informalities in appointment of directors not to invalidate proceedings.

Directors not to be personally liable.

Indemnity of directors.

Auditors.

Election of auditors.

Qualification of auditors.

Rotation of auditors.

Vacancies in office of auditor.

Failure of meeting to elect auditor.

(*s*) See the cases on this section collected and commented upon, ante, 50, text, notes (*m*) and (*n*), and following pages.

(*t*) Ante, 52, text, notes (*o*) and (*p*).

(*u*) As to the mode of entering into

contracts, ante, 50, text, note (*n*).

(*x*) See the Section on the "Accounts of the Company and their Audit," ante, 82, text.

APPENDIX.

Delivery of
balance sheet, &c.
by directors to
auditors.

Duty of auditors.

Powers of audi-
tors.

Accountability of
Officers.

Security to be
taken from offi-
cers entrusted
with money.

Officers to ac-
count on demand.

Summary remedy
against parties
failing to account.

Officers refusing
to deliver up do-
cuments, &c. to
be imprisoned.

Where officer
about to abscond,
a warrant may be
issued in the first
instance.

Sureties not to be
discharged.

directors ought to be chosen shall apply, *mutatis mutandis*, to any ordinary meeting at which an auditor ought to be appointed.

CVI. The directors shall deliver to such auditors the half-yearly or other periodical accounts and balance sheet fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders, as hereinafter provided.

CVII. It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and balance sheet required to be presented to the shareholders, and to examine the same.

CVIII. It shall be lawful for the auditors to employ such accountants and other persons as they may think proper, at the expense of the company, and they shall either make a special report on the said accounts, or simply confirm the same; and such report or confirmation shall be read, together with the report of the directors, at the ordinary meeting.

And with respect to the accountability of the officers of the company (y), be it enacted as follows:—

CIX. Before any person entrusted with the custody or control of monies, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office.

CX. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing, under his hand, of all monies received by him on behalf of the company; and such account shall state how, and to whom, and for what purpose, such monies shall have been disposed of; and, together with such account, such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all monies which shall appear to be owing from him upon the balance of such accounts.

CXI. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if, for three days after being thereunto required, he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters and things in his possession or power relating to the execution of this or the special act, or any act incorporated therewith, or belonging to the company, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices, at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or, in his absence, upon proof that such summons was personally served upon him, or left at his last known place of abode, such justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer, or upon evidence, or upon inspection of the account, that any monies of the company are in the hands of such officer, or owing by him to the company, such justices may order such officer to pay the same; and if he fail to pay the amount, it shall be lawful for such justices to grant a warrant to levy the same by distress, or, in default thereof, to commit the offender to gaol, there to remain without bail for a period not exceeding three months, unless the same be sooner paid.

CXII. If any such officer refuse to make out such account in writing, or to produce and deliver to the justices the several vouchers and receipts relating thereto, or to deliver up any books, papers or writings, property, effects, matters or thing in his possession or power belonging to the company, such justices may lawfully commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts (if any) in his possession or power relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters and things (if any) in his possession or power belonging to the company.

CXIII. Provided always, that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made, instead of issuing his summons, to issue his warrant for the bringing such officer before such two justices as aforesaid; but no person executing such warrant shall keep such officer in custody longer than twenty-four hours, without bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices, at a time and place to be named in such order, unless such officer give bail to the satisfaction of such justice for his appearance before such justices, to answer the complaint of the company.

CXIV. No such proceeding against, or dealing with, any such officer as aforesaid shall

(y) See the cases on this subject, ante, 83, text.

deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer.

APPENDIX.

And with respect to the keeping of accounts, and the right of inspection thereof by the shareholders (z), be it enacted as follows:—

CXV. The directors shall cause full and true accounts to be kept of all sums of money received or expended on account of the company by the directors, and all persons employed by or under them, and of the matters and things for which such sums of money shall have been received or disbursed and paid.

Accounts.

Accounts to be kept.

CXVI. The books of the company shall be balanced at the prescribed periods; and, if no periods be prescribed, fourteen days at least before each ordinary meeting; and forthwith, on the books being so balanced, an exact balance sheet shall be made up, which shall exhibit a true statement of the capital stock, credits and property of every description belonging to the company, and the debts due by the company at the date of making such balance sheet, and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half-year; and, previously to each ordinary meeting, such balance sheet shall be examined by the directors, or any three of their number, and shall be signed by the chairman or deputy chairman of the directors.

Books to be balanced.

CXVII. The books so balanced, together with such balance sheet as aforesaid, shall for the prescribed periods, and if no periods be prescribed, for fourteen days previous to each ordinary meeting, and for one month thereafter, be open for the inspection of the shareholders at the principal office or place of business of the company; but the shareholders shall not be entitled at any time, except during the periods aforesaid, to demand the inspection of such books, unless in virtue of a written order, signed by three of the directors.

Inspection of accounts by shareholders at stated times.

CXVIII. The directors shall produce to the shareholders assembled at such ordinary meeting the said balance sheet, applicable to the period immediately preceding such meeting, together with the report of the auditors thereon as hereinbefore provided.

Balance sheet to be produced at the meeting.

CXIX. The directors shall appoint a book-keeper to enter the accounts aforesaid in books to be provided for the purpose; and every such book-keeper shall permit any shareholder to inspect such books, and to take copies or extracts therefrom, at any reasonable time during the prescribed periods, and, if no periods be prescribed, during one fortnight before and one month after every ordinary meeting: and if he fail to permit any such shareholder to inspect such books, or take extracts or copies therefrom, during the periods aforesaid, he shall forfeit to such shareholder, for every such offence, a sum not exceeding five pounds.

Book-keeper to allow inspection of the accounts at the appointed times.

And with respect to the making of dividends (a), be it enacted as follows:—

Dividends.

CXX. Previously to every ordinary meeting at which a dividend is intended to be declared, the directors shall cause a scheme to be prepared, showing the profits (if any) of the company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme.

Previously to declaration of dividends, a scheme to be prepared.

CXXI. The company shall not make any dividend whereby their capital stock will be in any degree reduced: Provided always, that the word "dividend" shall not be construed to apply to a return of any portion of the capital stock, with the consent of all the mortgagees and bond creditors of the company, due notice being given for that purpose at an extraordinary meeting to be convened for that object.

Dividend not to be made so as to reduce capital.

CXXII. Before apportioning the profits to be divided among the shareholders, the directors may, if they think fit, set aside thereout such sum as they may think proper to meet contingencies, or for enlarging, repairing or improving the works connected with the undertaking, or any part thereof, and may divide the balance only among the shareholders.

Power to directors to set apart fund for contingencies.

CXXIII. No dividend shall be paid in respect of any share until all calls then due in respect of that and every other share held by the person to whom such dividend may be payable shall have been paid.

Dividend not to be paid unless all calls paid.

And with respect to the making of bye-laws, be it enacted as follows:—

Bye-laws.

CXXIV. It shall be lawful for the company from time to time to make such bye-laws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such bye-laws, and make others, provided such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the

Power to make bye-laws for the officers of the company.

(z) On this subject, see ante, p. 82, text. of profits only; see the cases on this subject collected, ante, 77, text.

(a) The dividends must be declared out

APPENDIX.

Fines for breach
of such bye-laws.

Bye-laws to be so
framed as that
penalties may be
mitigated.
Evidence of bye-
laws.

Arbitration.

Where questions
are to be deter-
mined by arbitra-
tion, arbitrators
to be appointed
within fourteen
days after notice.

Vacancy of arbi-
trator to be sup-
plied.

Appointment of
umpire.

Board of Trade
empowered to
appoint an um-
pire, on neglect
of the arbitrators,
in case of railway
companies.

Power of arbi-
trators to call for
books, &c.

Costs to be in the
discretion of the
arbitrators.

Submission to
arbitration to be
made rule of
court.

Notices.

Service of notices
upon company.

Service by com-

special act; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and a copy of such bye-laws shall be given to every officer and servant of the company affected thereby.

CXXV. It shall be lawful for the company, by such bye-laws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such bye-laws, as the company think fit, not exceeding five pounds for any one offence.

CXXVI. All the bye-laws to be made by the company shall be so framed as to allow the justice before whom any penalty imposed thereby may be sought to be recovered, to order a part only of such penalty to be paid, if such justice shall think fit.

CXXVII. The production of a written or printed copy of the bye-laws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such bye-laws, in all cases of prosecution under the same.

And with respect to the settlement of disputes by arbitration (b), be it enacted as follows:—

CXXVIII. When any dispute authorized or directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall, by writing under his hand, nominate and appoint an arbitrator, to whom such dispute shall be referred; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if, for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then, upon such failure, the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

CXXIX. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable, or refuse, or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal or disability as aforesaid.

CXXX. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, or refuse or for seven days neglect to act, they shall forthwith after such death, refusal, or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

CXXXI. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the Board of Trade, if they think fit, in any case in which a railway company shall be one party to the arbitration, on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

CXXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

CXXXIII. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpires, as the case may be.

CXXXIV. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

And with respect to the giving of notices (c), be it enacted as follows:—

CXXXV. Any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at, or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or, in case there be no secretary, then by being given to any one director of the company.

CXXXVI. Notices requiring to be served by the company upon the shareholders may,

(b) And see 22 & 23 Vict. c. 59, post.

(c) This is applicable to the service of a

declaration in ejectment. *Doe d. Burgess v. Roe*, 4 Dow. & L. 311; 16 M. & W. 98.

unless expressly required to be served personally, be served by the same being transmitted through the post, directed according to the registered address or other known address of the shareholder, within such period as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice; and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was so put into the post-office.

CXXXVII. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons shall be named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

CXXXVIII. All notices required by this or the special act, or any act incorporated therewith, to be given by advertisement, shall be advertised in the prescribed newspaper, or, if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the company's principal place of business shall be situate (*d*).

CXXXIX. Every summons, notice, or other such document requiring authentication by the company, may be signed by two directors, or by the treasurer or the secretary of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

CXL. And be it enacted, That, if any person against whom the company shall have any claim or demand become bankrupt, or take the benefit of any act for the relief of insolvent debtors, it shall be lawful for the secretary or treasurer of the company, in all proceedings against the estate of such bankrupt or insolvent, or under any fiat, sequestration or act of insolvency against such bankrupt or insolvent, to represent the company, and act in their behalf, in all respects as if such claim or demand had been the claim or demand of such secretary or treasurer, and not of the company (*e*).

CXLI. And be it enacted, That, if any party shall have committed any irregularity, trespass or other wrongful proceeding in the execution of this or the special act, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit; and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

And with respect to the recovery of damages not specially provided for, and penalties (*f*), be it enacted as follows:—

CXLII. In all cases where any damages, costs or expenses are by this or the special act, or any act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, on application, shall issue their or his warrant accordingly.

CXLIII. If sufficient goods of the company cannot be found whereon to levy any such damages, costs or expenses, payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

CXLIV. Where in this or the special act, or any act incorporated therewith, any question of compensation, expenses, charges or damages is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and

APPENDIX.

pany on shareholders.

Notices to joint proprietors of shares.

Notices by advertisement.

Authentication of notices.

Proof of debts in bankruptcy.

Tender of amends, and payment into court.

Recovery of Damages and Penalties.

Provision for damages not otherwise provided for.

Distress against the treasurer.

Method of proceeding before justices in questions of damages, &c.

(*d*) What is a sufficient notice, ante, 42, text, note (*m*).

(*e*) If a company prove against the estate of a bankrupt for calls, they must deduct the price or value of the shares from the amount of their claim, or give up the shares

for the benefit of the creditors of the bankrupt. *Re Jennings*, 1 Ir. Eq. R. 654, N. S., and see ante, 104, text.

(*f*) And see 8 & 9 Vict. c. 18, s. 136; c. 20, s. 140.

APPENDIX.

Publication of penalties.

upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties, or any of them, and their witnesses, on oath; and the costs of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Penalty for defacing boards used for such publication.

CXLV. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special act, or any act incorporated therewith, or by any bye-law of the company affecting other persons than the shareholders, officers or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalties to be summarily recovered before two justices.

CXLVI. If any person pull down or injure any board put up or affixed as required by this or the special act, or any act incorporated therewith, for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

CXLVII. Every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons, requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending, either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or, in his absence, after proof of the due service of such summons, it shall be lawful for two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them, and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties may be levied by distress.

CXLVIII. If forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress; and such justices, or either of them, shall issue their or his warrant of distress accordingly.

Imprisonment in default of distress.

CXLIX. It shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture and costs, unless the offender give sufficient security, by way of recognizance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of distress it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty or forfeiture, and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice shall, by warrant, cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture, and costs, be sooner paid and satisfied.

Distress how to be levied.

CL. Where in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not unlawful for want of form.

CLI. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application of penalties.

CLII. The justices by whom any such penalty or forfeiture shall be imposed may, where

the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed for the benefit of the poor of such parish; or, if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied for the benefit of the poor of such extra-parochial place, or of any adjoining parish or district, and shall order the same to be paid over to the proper officer for that purpose.

CLIII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

CLIV. If, through any act, neglect or default on account whereof any person shall have incurred any penalty imposed by this or the special act, or any act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

CLV. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special act, or any act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

CLVI. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special act, or any act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient dispatch, before some justice, without any warrant or other authority than this or the special act, and such justice shall proceed with all convenient dispatch to the hearing and determining of the complaint against such offender.

CLVII. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (G.) to this act annexed.

CLVIII. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

CLIX. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, or unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

CLX. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

And with respect to the provision to be made for affording access to the special act by all the parties interested, be it enacted as follows:—

CLXI. The company shall, at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to her Majesty, or some of them; and where the undertaking shall be a railway, canal or other like undertaking, the works of which shall not be con-

APPENDIX.

Penalties to be sued for within six months.

Damage to be made good in addition to penalty.

Penalty on witnesses making default.

Transient offenders (g).

Form of conviction.

Proceedings not to be quashed for want of form.

Parties allowed to appeal to quarter sessions on giving security.

Court to make such order as they think reasonable.

Access to Special Act.

Copies of special act to be kept and deposited, and allowed to be inspected.

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7 Will. 4 & 1
Vict. c. 83;
ante, p. 1.

Penalty on com-
pany failing to
keep or deposit
such copies.

Act not to extend
to Scotland.

For recovering
calls against
shareholders re-
siding in Scot-
land.

Alteration of act.

fined to one town or place, shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend, and in the office of the town clerk of every burgh or city into which or within one mile of which the works shall extend, a copy of such special act so printed as aforesaid; and the said clerks of the peace and town clerks shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties and other Persons to take the custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

CLXII. If the company shall fail to keep or deposit as hereinbefore mentioned any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall not be so kept or deposited.

CLXIII. And be it enacted, That this act shall not extend to Scotland.

CLXIV. Provided always, and be it enacted, That if any shareholder residing in Scotland shall fail to pay the amount of any call made upon him by the company in respect of any share held by him, it shall be lawful for the company to proceed against him in Scotland, and to sue for and recover the amount of such call, or to declare such share forfeited, in such manner as is by "The Companies Clauses Consolidation (Scotland) Act, 1845," in case the same shall pass into a law, provided in regard to any shareholders of any company in Scotland (h).

CLXV. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament.

SCHEDULES REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A.)

Form of Certificate of Share.

"The Company."

Number

This is to certify that *A. B.*, of , is the proprietor of the share number of "The Company," subject to the regulations of the said company. Given under the common seal of the said company, the day of , in the year of our Lord .

SCHEDULE (B.)

Form of Transfer of Shares or Stock.

I , of , in consideration of the sum of , paid to me by , of , do hereby transfer to the said share [or "shares"], numbered in the undertaking called "The Company," [or, " pounds Consolidated Stock in the undertaking called 'The Company,' standing [or, 'part of the stock standing'] in my name in the books of the company"], to hold unto the said , his executors, administrators and assigns [or, "successors and assigns"], subject to the several conditions on which I held the same at the time of the execution hereof; and I the said do hereby agree to take the said share [or "shares," or "stock"], subject to the same conditions. As witness our hands and seals, the day of .

SCHEDULE (C.)

Form of Mortgage Deed.

"The Company."

Mortgage, number £ .

By virtue of [here name the special act], we, "The Company," in consideration of the sum of pounds paid to us by *A. B.*, of do assign unto the said *A. B.*, his executors, administrators and assigns, the said undertaking, ["and" (in case such loan shall be in anticipation of the capital authorized to be raised) "all future calls on shareholders"], and all the tolls and sums of money arising by virtue of the said act, and all the estate, right, title and interest of the company in the same, to hold unto the said *A. B.*, his executors, administrators and assigns, until the said sum of pounds, together with interest for the same at the rate of for every one hundred pounds by the year, be satisfied ["the principal sum to be repaid at the end of years from the date hereof," in case any period be agreed upon for that purpose, "at ,," or any place of payment other than the principal office of the company]. Given under our common seal, this day of , in the year of our Lord .

(h) 8 & 9 Vict. c. 17; *Inglis v. Great Northern R. Co.*, in House of Lords, 16 Jurist, 895.

SCHEDULE (D.)

Form of Bond.

"The Company."

Bond, number £ .

By virtue of [*here name the special act*], we "The Company," in consideration of the sum of pounds to us in hand paid by *A. B.*, of , do bind ourselves and our successors unto the said *A. B.*, his executors, administrators and assigns, in the penal sum of pounds.

The condition of the above obligation is such, that if the said company shall pay to the said *A. B.*, his executors, administrators or assigns, ["at ," *in case any other place of payment than the principal office of the company he intended*], on the day of , which will be in the year one thousand eight hundred and , the principal sum of pounds, together with interest for the same at the rate of pounds per centum per annum, payable half-yearly, on the day of and day of , then the above-written obligation is to become void, otherwise to remain in full force. Given under our common seal, this day of , one thousand eight hundred and .

SCHEDULE (E.)

Form of Transfer of Mortgage or Bond.

I, *A. B.*, of , in consideration of the sum of , paid to me by *G. H.*, of , do hereby transfer to the said *G. H.*, his executors, administrators and assigns, a certain bond [*or "mortgage"*] number , made by "The Company" to , bearing date the day of , for securing the sum of and interest [*or, if such transfer be by indorsement, "the within security"*], and all my right, estate and interest in and to the money thereby secured [*and if the transfer be of a mortgage, "and in and to the tolls, money and property thereby assigned"*]. In witness whereof I have hereunto set my hand and seal, this day of , one thousand eight hundred and .

SCHEDULE (F.)

Form of Proxy.

A. B., , one of the Proprietors of "The Company," doth hereby appoint *C. D.*, of , to be the proxy of the said *A. B.*, in his absence to vote in his name upon any matter relating to the undertaking proposed at the meeting of the proprietors of the said company, to be held on the day of next, in such manner as he the said *C. D.* doth think proper. In witness whereof the said *A. B.* hath hereunto set his hand [*or, if a corporation, say, "the common seal of the corporation"*], the day of , one thousand eight hundred and .

SCHEDULE (G.)

Form of Conviction.

to wit.

Be it remembered, that on the day of , in the year of our Lord , *A. B.* is convicted before us, *C. D.*, two of her majesty's justices of the peace for the county of [*here describe the offence generally, and the time and place when and where committed*], contrary to the [*here name the special act*]. Given under our hands and seals the day and year first above written.

C.
D.

8 & 9 VICT. c. 18.

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a Public Nature.

[8th May, 1845.]

Whereas it is expedient to comprise in one general act sundry provisions usually introduced into acts of parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That this act shall apply to every undertaking authorized by any act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this act shall be incorporated with such act (i); and all

Act to apply to
all undertakings
authorized by
acts hereafter to
be passed.

(i) See *Ex parte Eton College*, 20 Law J. (Ch.) 1.

APPENDIX.

the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed, together therewith, as forming one act (k).

Interpretations in this act:

And with respect to the construction of this act and of acts to be incorporated therewith, be it enacted as follows:—

“special act;”

II. The expression “the special act,” used in this act, shall be construed to mean any act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this act shall be so incorporated as aforesaid; and the word “prescribed,” used in this act in reference to any matter herein

“prescribed;”

stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if, instead of the word “prescribed,” the expression “prescribed for that purpose in the special act” had been used; and the expression “the works” or “the undertaking” shall mean the works or undertaking, of whatever nature, which shall by the special act be authorized to be executed; and the expression “the promoters of the undertaking” shall mean the parties, whether company, undertakers, commissioners, trustees, corporations or private persons, by the special act empowered to execute such works or undertaking.

“the works;”

“the undertaking;”

“promoters of the undertaking.”

Interpretations in this and the special act:

III. The following words and expressions, both in this and the special act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say),—

number;

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number;

gender;

Words importing the masculine gender only shall include females;

“lands;”

The word “lands” shall extend to messuages, lands, tenements and hereditaments of any tenure;

“lease;”

The word “lease” shall include an agreement for a lease;

“month;”

The word “month” shall mean calendar month;

“superior courts;”

The expression “superior courts” shall mean her Majesty’s superior courts of record at Westminster or Dublin, as the case may require;

“oath;”

The word “oath” shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath;

“county;”

The word “county” shall include any riding or other like division of a county, and shall also include county of a city or county of a town;

“the sheriff;”

The word “sheriff” shall include under-sheriff; or other legally competent deputy (l); and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression “the sheriff,” or the expression “the clerk of the peace,” shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port or place where any part of such lands shall be situate;

“the clerk of the peace;”

“justices;”

The word “justices” shall mean justices of the peace acting for the county, city, liberty, cinque port or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression “two justices” shall be understood to mean two justices assembled and acting together (m);

“two justices;”

“owner;”

Where under the provisions of this or the special act, or any act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word “owner” shall be understood to mean any person or corporation who, under the provisions of this or the special act, would be enabled to sell and convey lands to the promoters of the undertaking;

(k) See *Re Westminster Bridge Act*, 1859; 33 L. J. (Ch.) 372.

(l) This does not prevent a warrant to hold an inquisition from being directed to the sheriff in cases where the under-sheriff

is disqualified by interest. *Worsley v. South Devon R. Co.*, 20 Law J. (Q. B.) 254.

(m) As to what may be done under this act by one justice of the metropolitan police courts, see 2 & 3 Vict. c. 71, s. 14.

The expression "the Bank" shall mean the Bank of England where the same shall relate to monies to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland.

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"the Bank."

IV. And be it enacted, That in citing this act in other acts of parliament, and in legal instruments, it shall be sufficient to use the expressssion "The Lands Clauses Consolidation Act, 1845."

Short title of the act.

V. And whereas it may be convenient in some cases to incorporate with acts of parliament hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, That, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the clauses of this act with respect to the matter so proposed to be incorporated, (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter), shall be incorporated with such act, and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

Form in which portions of this act may be incorporated with other acts.

And with respect to the purchase of lands by agreement (n), be it enacted as follows (o):—

Purchase of Lands by Agreement.

VI. Subject to the provisions of this and the special act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special act authorized to be taken, and which shall be required for the purposes of such act, and with all parties having any estate or interest in such lands, or by this or the special act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Power to purchase lands by agreement.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say), all corporations, tenants in tail or for life, married women seised in their own right, or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special act if they had respectively been under no disability, and as to such trustees, executors and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special act as if they had respectively been under no disability.

Parties under disability enabled to sell and convey.

VIII. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special act, or any act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Parties under disability to exercise other powers.

IX. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special act, and the com-

Amount of compensation in case of parties under

(n) These clauses are extended to purchases of land, &c. for public purposes, by 23 & 24 Vict. c. 106, s. 6, post.

(o) See on this subject generally; as to agreements made before the special act is obtained, ante, text, 149; as to agreements

made afterwards, ante, text, 168. How far companies when incorporated are bound in equity, by contracts made before their incorporation, *ibid.* 149. When a specific performance will be decreed, *ibid.*

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disability to be ascertained by valuation, and paid into the Bank.

Where vendor absolutely entitled, lands may be sold on chief rents.

Payment of rents to be charged on tolls.

Power to purchase lands required for additional accommodation.

Authority to sell and repurchase such lands.

Restraint on purchase from incapacitated persons.

Municipal corporations not to sell without the approbation of the Treasury.

Purchase of Lands otherwise than by Agreement.

Capital to be subscribed before compulsory powers of purchase put in force.

compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase-money or compensation shall be deposited in the Bank for the benefit of the parties interested, in manner hereinafter mentioned.

X. It shall be lawful for any person, seised in fee of, or entitled to dispose of absolutely for his own benefit (*p*), any lands authorized to be purchased for the purposes of the special act, to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent-charge payable by the promoters of the undertaking, *but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum (q).*

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rents shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking (*r*).

XII. In case the promoters of the undertaking shall be empowered by the special act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorized to be purchased for extraordinary purposes.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

XIV. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the lands so sold or disposed of by them.

XV. Nothing in this or the special act contained shall enable any municipal corporation to sell for the purposes of the special act, without the approbation of the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special act, other than such lands as the company are by the powers of this or the special act empowered to purchase or take compulsorily (*s*).

And with respect to the purchase and taking of lands otherwise than by agreement (*t*), be it enacted as follows (*u*):—

XVI. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special act, or any act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking (*x*).

(*p*) Extended to all sales, &c., where parties are under disability, 23 & 24 Vict. c. 106, s. 2, post.

(*q*) The words in italics repealed by 23 & 24 Vict. c. 106, s. 1, post.

(*r*) See note (*p*), supra.

(*s*) See 5 & 6 Will. 4, c. 76, s. 96.

(*t*) None of the provisions which follow, except sects. 16 and 17, apply to Irish railways, which are regulated by 14 & 15 Vict. c. 70, post.

(*u*) On this subject generally, ante, text, 173.

(*x*) This does not apply to Extension

XVII. A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof, and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special act, or any act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works (y).

XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands (z).

XX. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served upon some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

XXI. If, for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim (a) in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this act enabled to sell and convey or release any land taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices (b).

XXIII. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinbefore contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award (c), or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury (d), as hereinafter provided.

XXIV. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special act, or any act

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A certificate of two justices to be evidence that the capital has been subscribed.

Notice of intention to take lands.

Service of notices on owners and occupiers of lands.

Service of notice on a corporation aggregate.

If parties fail to treat, or in case of dispute, question to be settled as after mentioned.

Disputes as to compensation where the amount claimed does not exceed 50*l.* to be settled by two justices.

Compensation exceeding 50*l.* to be settled by arbitration or jury, at the option of the party claiming compensation.

Method of proceeding for settling disputes as to compensation by justices.

Act, where the funds are to be furnished by the company. *R. v. Great Western R. Co.*, 1 E. & B. 253.

(y) As to the requisites of this notice, ante, text, 180. The notice cannot be rescinded, *ibid.* 181; but a further notice may be given, that additional lands are required, *ibid.* 183. As to lands under the control of the Court of Chancery, *ibid.* 184.

(z) How these notices should be signed, ante, text, 180, note (x).

(a) The claim should state the owner's interest in the lands, accurately, ante, text, 184; and should apply to the same pre-

mises as those in the company's notice, *ibid.* 185. In some cases, the company may be required to take the whole of a house, &c., *ibid.* 174.

(b) See ante, text, 278.

(c) This applies to awards made under sect. 68: ante, text, 283. The umpire has three months to make his award, commencing from the period when his powers commence, *ibid.* 292.

(d) The proceedings do not commence, *de novo*, where the award fails, ante, text, 292.

APPENDIX.

Appointment of arbitrator when questions are to be determined by arbitration.

Vacancy of arbitrator to be supplied.

Appointment of umpire.

Board of Trade empowered to appoint an umpire on neglect of the arbitrators, in case of railway companies.

In case of death of single arbitrator the matter to begin *de novo*.

If either arbitrator refuse to act, the other to proceed *ex parte*.

incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

XXV. When any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator (*e*), to whom such dispute shall be referred (*f*); and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary or clerk (*g*), and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if, for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

XXVI. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

XXVII. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire (*h*) to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

XXVIII. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire (*i*), and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special act, shall be final.

XXIX. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special act in the same manner as if such arbitrator had not been appointed.

XXX. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect (*k*) to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

(*e*) There should be a nomination, and an announcement of it to the other party, ante, text, 285.

(*f*) If either party objects to the arbitrator appointed by the other, on a sufficient ground, it seems that he ought not to proceed with the reference, ante, text, 284, note (*o*). As to the mode of conducting the arbitration, generally, ante, text, 295.

(*g*) This applies to arbitrations entered into by agreement, ante, text, 284,

note (*q*).

(*h*) The umpire should be a perfectly disinterested person, ante, text, 286, note (*b*).

(*i*) What is not a good appointment, ante, text, 286, note (*d*). An umpire need not now be appointed under the seal of the Board of Trade, see 14 & 15 Vict. c. 64, s. 3, post.

(*k*) What amounts to a refusal and neglect, ante, text, 287.

XXXI. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (*l*) (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

XXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose (*m*).

XXXIII. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration (*n*); that is to say,

"I, *A. B.*, do solemnly and sincerely declare, That I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act [*naming the special act*]. *A. B.*

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators (*o*), shall be borne by the promoters of the undertaking (*p*), unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

XXXV. The arbitrators shall deliver their award in writing to the promoters of the undertaking (*q*), and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

XXXVI. The submission to any such arbitration may be made a rule of any of the superior courts (*r*), on the application of either of the parties (*s*).

XXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special act shall be set aside for irregularity or error in matter of form (*t*).

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice (*u*) to the other party of their intention to cause such jury to be sum-

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If arbitrators fail to make their award within twenty-one days, the matter to go to the umpire.

Power of arbitrators to call for books, &c.

Arbitrator or umpire to make a declaration.

Costs of arbitration how to be borne.

Award to be delivered to the promoters of the undertaking.

Submission may be made a rule of court.

Award not void through error in form.

Promoters of the undertaking to give notice before summoning a jury.

(*l*) The arbitrators cannot extend the time beyond the three months mentioned in sect. 23, ante, text, 290. But they may appoint an umpire, at any time within three months, although they have not enlarged the time, *ibid.* 291. The umpire has three months for making his award, from the time when his powers commence, *ibid.* 292.

(*m*) As to the mode of conducting the arbitration, ante, text, 290. Whether the arbitrators have jurisdiction to determine if damage, within the meaning of the statutes, has been sustained, *ibid.* 202; or have power to inquire into the title of lands, *ibid.* 303; or to inquire whether notices have been duly given, *ibid.* 304. As to the party which may claim the right to begin, *ibid.* 304, note (*k*).

(*n*) This declaration need not be made before a justice of the county in which the lands are situate, ante, text, 287, note (*l*).

(*o*) The umpire, if he acts, is the proper person to settle the costs, ante, text, 295. The costs need not be found on the face of the award, but may be given by a separate instrument, *ibid.* 294; and after the expiration of the three months, *ibid.*

295.

(*p*) When costs are divisible, ante, text, 293. If parties agree to arbitrate, provisions must be made as to costs, otherwise none can be given, *ibid.* 293. What description of costs are allowed, *ibid.* 294.

(*q*) The company may be compelled, by mandamus, to take up the award: and it is no answer to allege that the umpire demanded his fees, or to take objections to the proceedings, ante, text, 288, note (*p*).

(*r*) This includes the Court of Chancery, ante, text, 288, note (*q*).

(*s*) The award and appointment of the umpire need not be included, ante, text, 289, note (*q*).

(*t*) See on this subject, ante, text, 289, note (*s*). An award will not be set aside upon motion, unless it be clearly bad, *ibid.* 296. If the arbitrators exceed their duty, the submission may be revoked by the court, *ibid.* 297. What awards are invalid, *ibid.* 297. A bad award does not make entry on lands unlawful, *ibid.* 299. As to the mode of enforcing an award, *ibid.* 299.

(*u*) This notice is not necessary where the proceedings are under sect. 68; ante, text, 198.

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Warrant for summoning jury to be addressed to the sheriff.

Provisions applicable to sheriff to apply to coroner.

Jury to be summoned.

Jury to be impanelled.

Sheriff to preside; witnesses to be summoned.

Penalty on sheriff and jury for default.

Penalty on witnesses making default.

moned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

XXXIX. In every case in which any such question of disputed compensation (*x*) shall be required to be determined by the verdict of a jury, the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute (*y*) such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-corer, shall have power, if he think fit, to appoint a deputy or assessor.

XL. Throughout the enactments contained in this act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place; and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors' book and special jury list belonging to the county where the lands in question shall be situate.

XLI. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

XLII. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons, the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array (*z*).

XLIII. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law; and, if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts.

XLIV. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon any jury under this or the special act, whether common or special, do not appear, or if appearing, he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or jurymen shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such jurymen shall be subject to the same regulations, pains and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts.

XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the

(*x*) On this subject generally, ante, text, 300. An injunction does not generally lie to restrain the holding of the inquisition, *ibid.* 305; and on this subject, see also title *Injunction*, text.

(*y*) It is a fatal objection to the inquisition if it be shown that the sheriff was interested, ante, text, 302. But the objec-

tion should be taken at the hearing, *ibid.* The warrant should go to the sheriff, although the under-sheriff be interested, *ibid.*

(*z*) When a party is estopped from objecting to the jury after verdict, ante, text, 302, note (*u*).

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time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject-matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

XLVI. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

XLVII. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

XLVIII. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given, they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence (a).

XLIX. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately (b) for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage (if any) to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special act, or any act incorporated therewith.

L. The sheriff before whom such inquiry shall be held shall give judgment for the purchase-money or compensation assessed by such jury (c); and the verdict and judgment shall be signed by the sheriff (d), and being so signed shall be kept by the clerk of the peace (e) among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase-money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records (f), and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

LI. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking (g), all the costs of such inquiry (h) shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the land shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one-half of the costs of summoning, impannelling and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the pro-

Notice of inquiry.

If the party make default the inquiry not to proceed.

Jury to be sworn.

Sums to be paid for purchase of lands and for damage, to be assessed separately.

Verdict and judgment to be recorded.

Costs of the inquiry how to be borne.

(a) As to the right to begin, ante, text, 304, note (k). The sheriff and jury have no jurisdiction to inquire if the claimant has sustained legal damage, within the meaning of s. 68, *ibid.* 202, note (n); or to investigate the claimant's title to the lands, *ibid.* 303; or whether the preliminary notices have been given, *ibid.* 304. Only such damages as are apparent and capable of being ascertained can be inquired into, *ibid.* 305.

(b) These words are directory only, ante, text, 303, note (y).

(c) Notwithstanding the *certiorari* is taken away by sect. 145, the writ will lie to remove the inquisition, that it may be quashed, if the jurisdiction be exceeded, or in case of wilful miscarriage, ante, text, 310; but no new trial can be had, *ibid.* 317.

(d) How the inquisition should be signed, ante, text, 303, note (a). It may be drawn up after the inquiry, *ibid.* 303. *Semble*, that the preliminary matters need not be

stated, *ibid.* 308, although it seems desirable that they should, and that the lands should be described, &c., *ibid.* 309.

(e) Prohibition does not lie to prevent the verdict from being enrolled, ante, text, 303, note (b).

(f) An action of debt will lie to recover the money awarded, ante, text, 320. On such an action it is a good plea that the plaintiff has not sustained an injury, which is the subject of compensation, *ibid.* 202. As to the effect of the above enactment, that the proceedings shall be deemed records, *ibid.* 316.

(g) This means an offer made before the warrant was issued, ante, text, 320, note (h). Whether the provision is applicable, where no previous offer is made, *ibid.* The inquisition need not show on its face the liability to pay, or the amount of the costs, *ibid.* 310.

(h) As to the meaning of these words, ante, text, 321, notes (k), (l).

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Particulars of the costs.

moters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

LII. The costs of any such inquiry shall, in case of difference, be settled by one of the Masters of the Court of Queen's Bench of England or Ireland (*i*), according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges and expenses incurred in summoning, impannelling and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

Payment of costs.

LIII. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress (*k*), and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury to be summoned at the request of either party.

LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attornies, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after the striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

Deficiency of special jurymen.

LV. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen (*l*); and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Other inquiries before same special jury by consent.

LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Jurymen not to attend more than once a year.

LVII. No jurymen shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Compensation to absent parties to be determined by a surveyor appointed by two justices.

LVIII. The purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

Two justices to nominate a surveyor.

LIX. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence

(*i*) As to whether the courts have power to direct a revision of the taxation, ante, text, 321, note (*m*).

text, 321, note (*n*); and what other remedy exist, *ibid.* 320.

(*k*) Whether a mandamus will lie, ante,

(*l*) There is no challenge to the array, ante, sect. 42, p. 52.

from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid (*m*), and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid, he shall, in the presence of such justices or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say),

"I, *A. B.*, do solemnly and sincerely declare, That I will faithfully, impartially and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

A. B.

"Made and subscribed in the presence of ."

And if any surveyor shall corruptly make such declaration, or having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

LXIII. In estimating the purchase-money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special act, or any act incorporated therewith.

LXIV. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the Bank under the provisions herein contained, by reason that the owner of, or party entitled to convey, such lands or such interest therein as aforesaid, could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation, it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the monies so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorized or required to be submitted to arbitration.

LXV. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

LXVI. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or, in default thereof, the same may be enforced by attachment, or recovered with costs by action or suit in any of the superior courts.

LXVII. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators; but, if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

LXVIII. If any party shall be entitled (*n*) to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works (*o*), and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special act, or any act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty

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Declaration to be made by the surveyor.

Nomination, &c. to be preserved and produced, if required.

Expenses to be borne by promoters.

Purchase-money and compensation, how to be estimated.

Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

Question to be submitted to the arbitrators.

If further sum awarded, promoters to pay or deposit same within fourteen days.

Costs of the arbitration.

To be settled by arbitration or jury, at the option of the party claiming compensation.

(*m*) It does not seem to be necessary that the appointment should describe the lands, ante, text, 282, note (*g*). A surveyor in the employment of either of the parties ought not to be appointed, *ibid.* 189, note (*s*).

(*n*) This section applies to cases where the company have entered on lands, after depositing money and giving bond, under sect. 85, ante, text, 198.

(*o*) Lands must be *actually* taken or injured, or this section does not apply, ante, text, 199. When the company's works must be completed before this section can be enforced, *ibid.* When an injunction will not lie, to restrain proceedings under this section, *ibid.* 200. For what injuries compensation may be claimed, *ibid.* 216.

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pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided (*p*), or, if the party so entitled as aforesaid desire to have such question of compensation settled by a jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided (*q*), and, in default thereof, they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts (*r*).

Application of Compensation.

Purchase-money payable to parties under disability amounting to 200*l.* to be deposited in the Bank.

And with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:—

LXIX. If the purchase-money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same, except under the provisions of this or the special act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the Bank, in the name and with the privity of the Accountant General of the Court of Chancery in England if the same relate to lands in England or Wales, or the Accountant General of the Court of Exchequer in Ireland if the same relate to lands in Ireland, to be placed to the account there of such Accountant General *ex parte* the promoters of the undertaking, (describing them by their proper name), in the matter of the special act, (citing it), pursuant to the method prescribed by any act for the time being in force for regulating monies paid into the said courts; and such monies shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say),

Application of monies deposited.

In the purchase or redemption of the land-tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts or purposes (*s*); or,

In the purchase of other lands to be conveyed, limited and settled upon the like uses, trusts and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled (*t*); or,

If such money shall be paid in respect of any buildings taken under the authority of this or the special act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct (*u*); or,

In payment to any party becoming absolutely entitled to such money (*x*).

Order for application and investment meanwhile.

LXX. Such money may be so applied as aforesaid upon an order of the Court of Chancery in England, or the Court of Exchequer in Ireland, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited (*y*), and, until the money can be so applied, it may, upon the like order, be invested by the said Accountant General in the purchase of Three per Centum Consolidated or Three per Centum Reduced Bank Annuities, or in

(*p*) The sections in the statute relating to the costs of arbitration, apply to this section, ante, text, 199.

(*q*) Whether the company are required, under this section, to give notice to the claimant that they have issued their warrant, ante, text, 198.

(*r*) The sheriff and jury have no jurisdiction to inquire whether legal damage has been sustained, text, 303.

(*s*) See the cases on this branch of the section, ante, text, 324, notes (*f*), (*g*).

(*t*) See the cases, ante, text, 324, notes

(*h*), (*i*). Whether lands of a different tenure from those sold to the company may be purchased as a reinvestment, *ibid.* 324, note (*h*).

(*u*) On this subject, see ante, text, 325.

(*x*) When a party may be said to become entitled under this clause, ante, text, 326. When money produced by the sale of real estate becomes converted into personality, ante, text, 342.

(*y*) As to the terms of the reference to the Master and the present practice of the Court, ante, text, 326, note (*m*), also 327.

Government or real securities (x), and the interest, dividends and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands (a).

LXXI. If such purchase-money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the Bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees or trustees; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof, and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the Bank, but it shall not be necessary to obtain any order of the Court for that purpose.

LXXII. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or, in case of the coverture, infancy, idiocy, lunacy or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees or trustees of such persons (b).

LXXIII. All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the Bank, or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using or interfering with any such lands, or in lieu of bridges, tunnels or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands; but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery in England or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works (b).

LXXIV. Where any purchase-money or compensation paid into the Bank under the provisions of this or the special act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate or reversion in respect of which such money shall have been paid, or as near thereto as may be (c).

LXXV. Upon deposit in the Bank in manner hereinbefore provided of the purchase-money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, the owner of such lands, including in such term all parties by this act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed-poll under their common seal if they be a corporation, or, if they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed-poll shall be stamped with the stamp duty which would have been payable upon a

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Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.

Sums not exceeding 20*l.* to be paid to parties.

All sums payable under contract with persons not absolutely entitled to be paid into Bank.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

Upon deposit being made, the owners of the lands to convey, or, in default, the lands to vest in the promoters of the undertaking upon a deed poll being executed.

(x) When a mortgage security is an improper one, ante, text, 326, note (n).

(a) Ante, text, 327, note (o).

(b) Ante, text, 328.

(c) Ante, text, 329.

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conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase-money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands (e).

Where parties refuse to convey, or do not show title or cannot be found, the purchase money to be deposited.

LXXVI. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase-money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking (f), or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase-money or compensation payable in respect of such lands, or any interest therein, in the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

Upon deposit being made, a receipt to be given, and the lands to vest upon a deed-poll being executed.

LXXVII. Upon any such deposit of money as last aforesaid being made, the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed-poll under their common seal if they be a corporation, or, if they be not a corporation, under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed-poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase-money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Application of monies so deposited.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England or the Court of Exchequer in Ireland may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit (g).

Party in possession to be deemed the owner.

LXXIX. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and, unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly (h).

Costs in cases of money deposited (k).

LXXX. In all cases of money deposited in the Bank under the provisions of this or the special act, or an act incorporated therewith (i), except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive

(e) Ante, text, 329.

(f) Ante, text, 330, note (2).

(g) See as to the practice of the Court, when applications are made under this section, ante, text, 331, n. (b).

(h) As to the effect of this section when an issue at law is directed, see ante, text,

332, note (c).

(i) See *Re Ellison*, 8 De G., Macn. & G. 62.

(k) See this subject considered in detail, ante, text, 332. Many cases were decided in the courts of equity, upon the construction of similar clauses inserted in special

the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required (l), it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say), the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof (m), other than such costs as are herein otherwise (n) provided for (o), and the costs of the investment of such monies in government or real securities (p), and of the re-investment thereof in the purchase of other lands (q), and also the costs of obtaining the proper orders for any of the purposes aforesaid (r), and of the orders for the payment of the dividends (s) and interest of the securities upon which such monies shall be invested, and for the payment out of court (t) of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants (u): Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking (x).

And with respect to the Conveyances of Lands, be it enacted as follows:—

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special act, or any act incorporated therewith, may be according to the forms in the Schedules (A.) and (B.) respectively to this act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but, although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance (y).

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing,

Conveyances.

Form of conveyances.

Costs of conveyances.

acts of parliament passed previously to the consolidation act; but although these cases are frequently cited, it may be observed that they do not often afford a guide to the construction of the above section. See these cases, ante, text, 333, note (i).

(l) See ante, text, 332.

(m) See ante, text, 333, note (g).

(n) See ante, text, 333, note (h).

(o) The costs of an inquisition and conveyance, consequent upon an entry on the lands, after giving a bond and making a deposit under sect. 85, are "otherwise provided for" within the meaning of these words, ante, 191, note (z).

(p) The brokers' commission forms a part of these costs, ante, text, 333, note (i). And where purchase-money was invested in 1844, and asked to be paid out, by trustees of a settlement, to mortgagees, and that the company might pay brokerage both of investment and selling out, as well as the costs of tenant for life, and mortgagees appearing separately, it was decided that the investment being made before the then recent rule of deducting brokerage made no difference, except in this case

there had been no taxation of costs of investment, and therefore the company were only liable to brokerage on selling out; and that mortgagees and tenants for life had a right to appear separately and have their costs. *In re Legh*, Weekly Rep. 1853-4, p. 109.

(q) To what extent this renders the company liable to pay these costs, ante, text, 336.

(r) See these words explained ante, text, 336.

(s) Ante, text, 335, note (r).

(t) Ante, text, 338.

(u) Ante, text, 338. Dividends of stock representing the purchase-money of land, paid into court by a company, are not apportionable between the tenant for life and remainder-man, where the title to the land taken was under a will made in 1795. The costs of the representatives of the tenant for life, appearing on a petition for payment out of court of the fund, are costs of "adverse litigation," and as such not payable by a company. *In re Longworth*, Weekly Rep. 1853-4, p. 124.

(x) Ante, text, 334, note (p).

(y) And see 8 & 9 Vict. c. 112.

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Taxation of costs
of conveyances.

and verifying the title to such lands, terms or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction and verification of such title.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery, or by a master in chancery in Ireland, upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or, in default thereof, the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation (z).

Entry on Lands.

Payment of price
to be made pre-
vious to entry,
except to survey,
&c.

And with respect to the Entry upon Lands by the promoters of the undertaking, be it enacted as follows:—

LXXXIV. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter (a) upon any lands which shall be required to be purchased or permanently used (b) for the purposes and under the powers of this or the special act, until they shall either have paid to every party having any interest in such lands, or deposited in the Bank, in the manner herein mentioned (c), the purchase-money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that, for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Promoters to be
allowed to enter
on lands before
purchase on mak-
ing deposit by way
of security and
giving bond.

LXXXV. Provided also (d), that, if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase-money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit (e) in the Bank by way of security, as hereinafter mentioned, either the amount of purchase-money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor (f) appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found (g), be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey (h); and also to give to such party a bond (i), under the common seal of the promoters if they be a corporation, or, if they be not a corporation, under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the Bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase-money or compensation, as may in manner hereinbefore provided be determined (k) to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands, until such purchase-money or compensation shall be paid to such party, or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-con-

(z) Ante, text, 349, note (z).

(a) What is an entering on the lands, ante, text, 188, note (n); *ibid.* 189, note (p); 191, note (c).

(b) It is a permanent use of the lands to tunnel under them, ante, text, 188, note (n).

(c) See sects. 76 and 77.

(d) On the subject of this section generally, ante, text, 189.

(e) What is a sufficient deposit, ante, text, 189, note (r).

(f) The company ought not to have

their own surveyor appointed, ante, text, 189, note (s).

(g) Ante, sect. 59.

(h) No notice to the owner of the land is necessary, to raise the jurisdiction of the justices to appoint a surveyor, ante, text, 190, note (u).

(i) What is a sufficient bond, ante, text, 194.

(k) The compensation is to be determined in the manner pointed out by section 68, ante, text, 193.

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senting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special act.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the Bank in the name and with the privity of the Accountant-General of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made, the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose, and to whose credit the same shall have been paid in.

Upon deposit being made, cashier to give receipt.

LXXXVII. The money so deposited as last aforesaid shall remain in the Bank, by way of security to the party whose lands shall so have been entered upon, for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated; and upon the condition of such bond being fully performed, it shall be lawful for the Court of Chancery in England, or the Court of Exchequer in Ireland, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking (l), or, if such condition shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

Deposit to remain as a security, and to be applied under the direction of the court.

LXXXVIII. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery in England, or the Court of Exchequer in Ireland, to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the Bank by way of security as aforesaid, it shall be lawful for the company to pay into the Bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the governor and company of the Bank in that behalf, request, and upon any such payment being made, the cashier of the Bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-General's Office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and, upon production of such direction at the Bank of England, the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt for the said payment be given to the party making the same in the usual way, for the purpose of being filed at the Report Office.

The company may pay the deposit-money into the Bank by way of security during the time that the office of the Accountant-General is closed.

LXXXIX. If the promoters of the undertaking, or any of their contractors (m), shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking, or their contractors, shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide*, and without collusion (n), have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit, by way of security, in respect thereof, as hereinbefore mentioned, although such person may not have been legally entitled thereto.

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase-money.

XC. On the trial of any action for any such penalty as aforesaid, the decision of the

Decision of justices not conclu-

(l) The deposit is obtained upon petition, ante, text, 191, note (z).

of contractors, ante, text, 191, note (c).

(m) Where an injunction lies for the acts

(n) This proviso should be liberally construed, ante, text, 192, note (d).

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sive as to the rights of the promoters.

Proceedings in case of refusal to deliver possession of lands.

Parties not to be required to sell part of a house.

Intersected Lands.

Owners of intersected lands may insist on sale.

Promoters of the undertaking may insist on purchase where expense of bridges, &c. exceeds the value.

Copyholds.

Conveyance of copyhold lands to be inrolled.

justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

XCI. If in any case in which, according to the provisions of this or the special act, or any act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same; and, upon the receipt of such warrant, the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party; or, if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and, upon application to any justice for that purpose, he shall issue his warrant accordingly.

XCII. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only (*o*) of any house, or other building or manufactory, if such party be (*p*) willing and able to sell and convey the whole thereof (*q*).

And with respect to small Portions of intersected Land, be it enacted as follows:—

XCIII. If any lands, not being situate in a town or built upon (*r*) shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special act, the promoters of the undertaking shall purchase the same accordingly (*s*), unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

XCIV. If any such (*t*) land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special act, or any act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain, by their verdict or award, the value of any such severed piece of land, and also what would be the expense of making such communication.

And with respect to Copyhold Lands (*u*), be it enacted as follows:—

XCV. Every conveyance, to the promoters of the undertaking, of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof (*x*), he shall make such inrolment; and every such conveyance, when so inrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure; nevertheless, until such lands shall have

(*o*) What is "a part only" within this section is discussed ante, text, 174; whether making a tunnel under a house is a taking of the house, *ibid.* note (*x*).

(*p*) The owner should give notice when he requires the whole to be taken, ante, text, 177.

(*q*) The owner cannot by mandamus compel the company to take the whole of a house under this section, *ibid.* 177.

(*r*) See the cases on this subject, ante, text, 178.

(*s*) As to the mode of assessing the compensation in such a case, ante, text, 186.

(*t*) This refers to intersected land, as mentioned in the heading to section 93, ante, text, 178.

(*u*) Ante, text, 345, note (*i*).

(*x*) Ante, text, 345, note (*k*).

been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots and services as were theretofore payable and of right accustomed.

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XCVI. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then, within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him; and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement, the same shall be determined as in other cases of disputed compensation; and in estimating such compensation, the loss in respect of the fines, heriots, and other services payable on death, descent or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for (y).

Copyhold lands to be enfranchised.

XCVII. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the Bank, in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common socage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed-poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common socage.

Lord of the manor to enfranchise on payment of compensation.

XCVIII. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land, subject to any such rent, be required to be taken for the purposes of the special act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor, on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands, taken by virtue of this or the special act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

Apportionment of copyhold rents.

And with respect to any such Lands being Common or Waste lands, be it enacted as follows:—

Common Lands.

XCIX. The compensation in respect of the right in the soil of any lands subject to any right of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights, to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands, the right in the soil of which shall belong to the commoners; and upon payment or deposit in the Bank of the compensation so determined, all such commonable and other rights shall cease and be extinguished.

Compensation for common lands, where held of a manor, &c., how to be paid.

C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the Bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee-simple of such lands at the time of executing such conveyance; and, in default of such conveyance, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed-poll, duly stamped, in the manner hereinbefore provided in the case of

Lord of the manor, &c., to convey to the promoters of the undertaking, on receiving compensation for his interest.

(y) See *Grand Junction Canal Co. v. Dimes*, 15 Sim. 402; 2 Macn. & G. 285.

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Compensation for common lands where not held of a manor, how to be ascertained.

A meeting of the parties interested to be convened.

Meeting to appoint a committee.

Committee to agree with the promoters of the undertaking.

Disputes to be settled as in other cases.

If no committee be appointed, the amount to be determined by a surveyor.

Upon payment of compensation payable to commoners, the lands to vest.

Lands in Mortgage.

Power to redeem mortgages.

the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject, nevertheless, to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

CI. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

CII. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or, if there be no such church, some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

CIII. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

CIV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests (z); but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.

CV. If, upon such committee being appointed, they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or, if taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

CVII. Upon payment or tender to such committee, or any three of them, or, if there shall be no such committee, then upon deposit in the Bank, in the manner provided in the like case, of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed-poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

And with respect to Lands subject to Mortgage (a), be it enacted as follows:—

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem

(z) See further 17 & 18 Vict. c. 97, s. 15
—20, post.

(a) When a notice should be given to mortgagee, see ante, text, 196.

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the interest of the mortgagee of any such lands which may be required for the purposes of the special act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special act; and, in order thereto, the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest; and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then, at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

CIX. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the Bank, in the manner provided by this act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed-poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Deposit of mortgage money on refusal to accept.

CX. If any such mortgaged lands shall be of less value than the principal, interest and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage-debt, so far as the same will extend; and, upon payment or tender thereof, the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Sums to be paid when mortgage exceeds the value of the lands.

CXI. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the Bank, in the manner provided by this act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage-debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed-poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Deposit of money when refused on tender.

CXII. If a part only of any such mortgaged lands be required for the purposes of the special act, and if the part so required be of less value than the principal money, interest and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any)

Sum to be paid where part only of mortgaged lands taken.

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to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be indorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of
money when re-
fused on tender.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or, if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank, in the manner provided by this act in the case of monies required to be deposited in such Bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed-poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and, in case such mortgagee were himself entitled to such possession, they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof, (as the case may be,) and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Compensation
to be made in cer-
tain cases, if
mortgage paid off
before the stipu-
lated time.

CXIV. Provided always, That, in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and, under the provisions hereinbefore contained, the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of, or which shall be incidental to, the reinvestment of the sum so paid off, such costs, in case of difference, to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on reinvesting the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid, the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provisions hereinbefore contained.

Rent-charges.

And with respect to Lands charged with any Rent-service, Rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:—

Release of lands
from rent-
charges.

CXV. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special act, the same shall be determined as in other cases of disputed compensation.

Release of part
of lands from
charge.

CXVI. If part only of the lands charged with such rent-service, rent-charge, chief or other rent, payment or incumbrance, be required to be taken for the purposes of the special act, the apportionment of any such charge may be settled by agreement between

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the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and, if such apportionment be not settled by agreement, the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail to do so, or if he fail to adduce a good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed-poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon the rent-service, rent-charge, chief or other rent, payment or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Deposit in case of refusal to release.

CXVIII. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if, upon any such charge or portion of charge being so released, the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or, if they be a corporation, shall affix their common seal to a memorandum of such release indorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special act, and, if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or, if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Charge to continue on lands not taken.

And with respect to Lands subject to Leases, be it enacted as follows:—

Leases.

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Where part only of lands under lease taken, the rent to be apportioned.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Tenants to be compensated.

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as a tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or, if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation, all such persons shall respectively deliver up to the promoters of the undertaking, or to

Compensation to be made to tenants at will, &c.

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Where greater interest claimed than from year to year, lease to be produced.

Limit of time for compulsory purchase.

Interests omitted to be purchased.

Promoters of the undertaking empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.

How value of such lands to be estimated.

Proprietors of the undertaking to pay the costs of litigation as to such lands.

Sale of superfluous Land.

Lands not wanted to be sold, or, in default, to vest

the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special act (c).

CXXII. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year and be entitled to compensation accordingly.

CXXIII. And be it enacted, That the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special act shall not be exercised after the expiration of the prescribed period, and, if no period be prescribed, not after the expiration of three years from the passing of the special act (d).

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows (e):—

CXXIV. If, at any time after the promoters of the undertaking shall have entered upon any lands which, under the provisions of this or the special act, or any act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special act, any party shall appear to be entitled to any estate, right or interest in or charge affecting such lands which the promoters of the undertaking shall, through mistake or inadvertence, have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided, within six months after notice of such estate, right, interest or charge, in case the same shall not be disputed by the promoters of the undertaking, or, in case the same shall be disputed, then, within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase-money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase-money or compensation shall be agreed on or awarded and paid in like manner as, according to the provisions of this act, the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest or charge before their entering upon such land, or as near thereto as circumstances will admit.

CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, (as the case may be,) shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

CXXVI. In addition to the said purchase-money, compensation or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows:

CXXVII. Within the prescribed period, or if no period be prescribed, within ten years after the expiration of the time limited by the special act for the completion of the works,

(c) On this section, see ante, text, 250.

(d) If notices to treat are given before the expiration of the prescribed period, all the subsequent steps to assess the compensation and purchase-money may be taken afterwards, ante, text, 179. And if the com-

pany give a bond and enter under sect. 85, their possession is not unlawful, although the compensation be not ascertained when the prescribed period expires, *ibid.* 180.

(e) On this subject generally, ante, text, 350.

the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase-money arising from such sales to the purposes of the special act; and, in default thereof, all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

CXXVIII. Before the promoters of the undertaking dispose of any such superfluous lands, they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or, if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption, such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit (*f*).

CXXIX. If any such person be desirous of purchasing such lands, then, within six weeks after such offer of sale, they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

CXXX. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase-money so agreed upon or determined as aforesaid, they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or, if not a corporation, under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

CXXXII. In every conveyance of lands to be made by the promoters of the undertaking under this or the special act, the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)—

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee-simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them;

A covenant that the grantee of such lands, his heirs, successors, executors, administrators and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking;

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators or assigns (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them;

And all such grantees, and their several successors, heirs, executors, administrators and

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in owners of adjoining lands.

Lands to be offered to owners of lands from which they were originally taken or to adjoining owners.

Right of pre-emption to be claimed within six weeks.

Differences as to price to be settled by arbitration.

Lands to be conveyed to the purchasers.

Effect of the word "grant" in conveyances.

(*f*) *London and Greenwich R. Co. v. Goodchild*, 3 Railw. Cas. 507; 8 Jur. 455.

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Land tax and
poor's rate to be
made good.

assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenant, as they might do if such covenants were expressly inserted in such conveyances.

CXXXIII. And be it enacted, That, if the promoters of the undertaking become possessed by virtue of this or the special act, or any act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall, from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special act; and on demand of such deficiency, the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the acts for the redemption of the land tax.

Service of notices
upon company.

CXXXIV. And be it enacted, That any summons or notice, or any writ or other proceeding at law or equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or, in case there be no secretary, the solicitor of the said promoters (g).

Tender of
amends.

CXXXV. And be it enacted, That, if any party shall have committed any irregularity, trespass or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made, it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Recovery of
Penalties.

Penalties to be
summarily recovered
before two
justices.

And with respect to the recovery of forfeitures, penalties and costs, be it enacted as follows (h):—

CXXXVI. Every penalty or forfeiture imposed by this or the special act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and, on complaint being made to any justice, he shall issue a summons requiring the party complained against to appear before two justices, at a time and place to be named in such summons; and every such summons shall be served on the party offending, either in person, or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or, in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties to be
levied by dis-
tress.

CXXXVII. If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress; and such justices, or either of them, shall issue their or his warrant of distress accordingly.

Distress how to
be levied.

CXXXVIII. Where, in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalties, costs or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application of
penalties.

CXXXIX. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish; or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in

(g) Ante, text, 180, note (x).

(h) See 11 & 12 Vict. c. 43, as to the

mode of proceeding upon summary convictions.

aid of the poor's rate of such extra-parochial place, or, if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district.

CXL. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

CXLI. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage, in an action upon the case.

CXLII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath, or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

CXLIV. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (C.) to this act annexed.

CXLV. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts (*i*).

CXLVI. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture, under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

CXLVII. At the quarter sessions for which such notice shall be given, the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal, the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

CXLVIII. Provided always, and be it enacted, That, notwithstanding anything herein or in the special act, or any act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted

APPENDIX.

Distress against the treasurer.

Distress not unlawful for want of form.

Penalties to be sued for within six months.

Penalty on witnesses making default.

Form of conviction.

Proceedings not to be quashed for want of form.

Parties allowed to appeal to quarter sessions on giving security.

Court to make such order as they think reasonable.

Receiver of the metropolitan police district to receive penalties incurred within his district.

(i) The writ lies if the jurisdiction be exceeded. See note (c) to sect. 50, ante, 53. How the writ should be obtained, and upon what affidavits, ante, text, 314.

APPENDIX.

2 & 3 Vict. c. 71.

Persons giving
false evidence
liable to penalties
of perjury.

Access to special
Act.

Copies of special
act to be kept and
deposited, and
allowed to be in-
spected.

7 Will. 4 & 1 Vict.
c. 83, ante, p. 1.

Penalty on com-
pany failing to
keep or deposit.

Act not to extend
to Scotland.

Act may be
amended this
session.

for, paid, and applied by an act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," and every order or conviction of any of the police magistrates, in respect of any such forfeiture or penalty, shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned act.

CXLIX. And be it enacted, That any person who, upon any examination upon oath under the provisions of this or the special act, or any act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows:—

CL. The company shall, at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to her majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special act so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same and make extracts or copies therefrom, in the like manner and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections, by an act passed in the first year of the reign of her present majesty, intituled "An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

CLI. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

CLII. And be it enacted, That this act shall not extend to Scotland (k).

CLIII. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of Parliament.

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.)

Form of Conveyance.

I, _____, of _____, in consideration of the sum of _____, paid to me [or _____, as the case may be], into the Bank of England [or "Bank of Ireland"], in the name and with the privity of the Accountant-General of the Court of Chancery, *ex parte* "The promoters of the undertaking" [naming them], [or to A. B., of _____, and C. D., of _____, two trustees appointed to receive the same], pursuant to the [here name the special act], by the [here name the company, or other promoters of the undertaking], incorporated [or "constituted"] by the said act, do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said act empowered to convey, to hold the premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said act. In witness whereof I have hereunto set my hand and seal, the _____ day of _____, in the year of our Lord _____.

SCHEDULE (B.)

Form of Conveyance on Chief Rent.

I, _____ of _____, in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "the promoters of the undertaking" [naming _____]

(k) The Scotch Act is 8 & 9 Vict. c. 19.

them], incorporated [or constituted] by virtue of the [here name the special act], do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said act, they the said company [or other description], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of , by equal quarterly [or "half-yearly," as agreed upon], portions, henceforth, on the [stating the days], clear of all taxes and deductions. In witness whereof I have hereunto set my hand and seal, the day of , in the year of our Lord .

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SCHEDULE (C.)

Form of Conviction.

to wit.

Be it remembered, that, on the day of , in the year of our Lord , A. B. is convicted before us, C. D., two of her Majesty's justices of the peace for the county of , [here describe the offence generally, and the time and place when and where committed], contrary to the [here name the special act]. Given under our hands and seals the day and year first above written.

C.
D.

8 & 9 VICT. CAP. 20.

An Act for Consolidating in One Act certain Provisions usually inserted in Acts authorizing the making of Railways (m). [8th May, 1845.]

Whereas it is expedient to comprise in one general act sundry provisions usually introduced into Acts of Parliament authorizing the construction of railways, and that, as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves; and whereas a bill is now pending in Parliament, intituled "An Act for consolidating in one Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a Public Nature," and which is intended to be called "The Lands Clauses Consolidation Act, 1845:" May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this act shall apply to every railway which shall, by any act which shall hereafter be passed, be authorized to be constructed, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act (n), and be construed together therewith as forming one act.

Operations of this act confined to future railways.

And with respect to the construction of this act and of other acts to be incorporated therewith, be it enacted as follows:—

Interpretations in this Act.

II. The expression "the special act," used in this act, shall be construed to mean any act which shall be hereafter passed authorizing the construction of a railway, and with which this act shall be so incorporated as aforesaid; and the word "prescribed," used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the lands" shall mean the lands which shall by the special act be authorized to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the railway and works, of whatever description, by the special act authorized to be executed.

"special act;"

"prescribed;"

"the lands;"

"the undertaking."

III. The following words and expressions, both in this and the special act, shall have

Interpretations in this and the special act:

(m) See also "The Railways Clauses Act, 1863," 26 & 27 Vict. c. 92, post.

that its provisions were applicable to works done under the original special act. *Evans v. Lancashire and Yorkshire R. Co.*, 22 L. J. (Q. B.) 254; 1 E. & B. 754.

(n) Where a special act was amended by a subsequent act, with which latter act the Consolidation Act was incorporated: held

APPENDIX.	the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say),
number;	Words importing the singular number only shall include the plural number; and words importing the plural number only shall include also the singular number;
gender;	Words importing the masculine gender only shall include females;
"lands;"	The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure;
"lease;"	The word "lease" shall include an agreement for a lease;
"toll;"	The word "toll" shall include any rate or charge or other payment payable under the special act for any passenger, animal, carriage, goods, merchandize, articles, matters, or things conveyed on the railway;
"goods;"	The word "goods" shall include things of every kind conveyed upon the railway;
"month;"	The word "month" shall mean calendar month;
"superior courts;"	The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require;
"oath;"	The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath;
"county;"	The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town;
"the sheriff;"	The word "sheriff" shall include under-sheriff or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff or clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate;
"justice;"	The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together (<i>o</i>);
"two justices;"	Where, under the provisions of this or the special act, any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special act, or any act incorporated therewith, would be enabled to sell and convey lands to the company;
"owner;"	The expression "the company" shall mean the company or party which shall be authorized by the special act to construct the railway;
"the company;"	The expression "the railway" shall mean the railway and works by the special act authorized to be constructed (<i>p</i>);
"the railway;"	The expression "the Board of Trade" shall mean the lords of the committee of her Majesty's Privy Council appointed for Trade and Foreign Plantations;
"Board of Trade;"	The expression "the Bank" shall mean the Bank of England, where the same shall relate to monies to be paid or deposited in respect of lands situate in England; and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland;
"the Bank;"	The expression "turnpike road" shall, when applied to any road in Ireland, include any road upon which her Majesty's mails are or shall be carried in mail carriages; or such other roads as the Commissioners of Public Works in Ireland shall consider to require arches of greater width or height than by this act is required for public carriage roads;
"turnpike road," Ireland;	The expression "surveyor," applied to a road or highway, shall, as to railways in Ireland, include the county surveyor (<i>q</i>);
"surveyor," Ireland;	The expression "overseers of the poor," when applied to Ireland, shall include the poor-
"overseers of the poor," Ireland.	

(*o*) See ante, 46, note (*m*).(*p*) See this clause commented upon, ante, text, 385.(*q*) See as to the taking of lands in Ireland for the purposes of a railway, 14 & 15 Vict. c. 70, post.

law guardians of the electoral division and the clerk of the guardians of the union through which such railway may pass (*r*).

IV. And be it enacted, That, in citing this act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Railways Clauses Consolidation Act, 1845."

V. And whereas it may be convenient in some cases to incorporate with acts hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, That, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact, that the clauses of this act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act, in the words introductory to the enactment with respect to such matter) shall be incorporated with such act, and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by this act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

And with respect to the construction of the railway and the works connected therewith (*s*), be it enacted as follows:—

VI. In exercising the power given to the company by the special act to construct the

(*r*) By 3 & 4 Vict. c. 10, s. 15, and 5 & 6 Vict. c. 9, s. 11, which authorizes the issue of exchequer bills for certain public purposes, the commissioners are empowered to make loans or advances to any "trustees or trustee of roads or railways." These words do not seem to include railway companies.

(*s*) The following statute may be enforced during the construction of the railway. By stat. 1 & 2 Vict. c. 80, intituled "An Act for the Payment of Constables for keeping the Peace near Public Works," after reciting that, whereas great mischiefs have arisen by the outrageous and unlawful behaviour of labourers and others employed on railroads, canals, and other public works, by reason whereof, the appointment of special constables is often necessary for keeping the peace, and for the protection of the inhabitants and security of the property in the neighbourhood of such public works, whereby great expenses have been cast upon the public rates of counties and other districts chargeable with such expenses, be it enacted, that after the passing of this act, wherever any special constables shall be appointed under the statutes 1 & 2 Will. 4, c. 41, and 6 & 7 Will. 4, c. 36, and it shall be made to appear to any two or more justices of the peace of any county, &c., city, or borough, in England or Wales, on the oath or three or more credible witnesses, that the appointment of such special constables has been occasioned by the behaviour, or by reasonable apprehension of the behaviour, of the persons employed upon any railway, canal, or other public work made or carried on under the authority of Parliament within the district or division for which such justices usually act, it shall be lawful for such justices as aforesaid, at any time not exceeding one calendar month next after such appointment, to make orders from time to time, upon the treasurer or other officer who shall have the control or custody of the funds of any company, making or carrying on such railroad, &c., for the payment of such reasonable allowances for their trouble, loss of

time and expenses to such special constables who shall have so served, or be then serving, as to the said justices shall seem proper; and a copy of every such order shall be sent by the justices to one of her Majesty's principal secretaries of state, and such order, if allowed by the secretary of state, shall be binding on such company, and on every such treasurer and officer thereof; provided always, that nothing herein contained shall empower any such justices to order any allowance for any such special constables at the rate of more than five shillings daily, to be paid to each special constable employed for the purposes aforesaid. By sect. 2, if it shall appear to the secretary of state that there was no need for the appointment of such special constables, or that a greater number of special constables was appointed than was needed by reason of the behaviour, or reasonable apprehension of the behaviour, of the persons employed on such railroad, &c., the secretary of state shall have power to disallow any such order, or to reduce the amount ordered to be paid by any such order, in such manner as to him shall seem just according to the circumstances of each case; and in such case, the order shall be of no force, or shall be of force for such reduced amount only, as the case may be; and the whole of such expenses, in case the whole shall be disallowed, or so much thereof as shall exceed such reduced amount, if a part shall be allowed, shall be defrayed out of the public rates of such county, &c., as if this act had not been made. By sect. 3, in all cases where such treasurer, or other officer as aforesaid, shall refuse or neglect, during three weeks next after demand thereof, to pay such sum of money as shall have been ordered by such justices, and allowed by the secretary of state as aforesaid, it shall be lawful for such justices to cause the same to be levied by distress upon the goods and chattels belonging to such company. See somewhat similar statutes applicable to Ireland only, 8 & 9 Vict. c. 46, post, p. 101; 11 & 12 Vict. c. 72, post, p. 112; and to Scotland,

APPENDIX.

Short title of the act.

Form in which portions of this act may be incorporated in other acts.

Construction of Railway.

The construction of the railway to be subject to the provisions of this act and the Lands Clauses Consolidation Act.

APPENDIX.

Errors and omissions in plans to be corrected.

Works not to be proceeded with until plans of all alterations authorized by Parliament have been deposited.

Clerks of the peace, &c., to receive plans of alterations, and allow inspections.

7 Will. 4 & 1 Vict. c. 83, ante, p. 1.

Copies of plans, &c. to be evidence.

Limiting deviation from datum line described on sections, &c. (x).

railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in this act and in the said Lands Clauses Consolidation Act; and the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers by this or the special act, or any act incorporated therewith, vested in the company; and except where otherwise provided by this or the special act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned act shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

VII. If any omission, mis-statement, or erroneous description shall have been made of any lands, or of the owners, lessees or occupiers of any lands described on the plans or books of reference mentioned in the special act, or in the schedule to the special act, it shall be lawful for the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, to apply to two justices for the correction thereof^(t); and if it shall appear to such justices that such omission, misstatement or erroneous description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, and in what respect any such matter shall have been misstated or erroneously described; and such certificate shall be deposited with the clerks of the peace of the several counties in which the lands affected thereby shall be situated, and shall also be deposited with the parish clerks of the several parishes in England, and with the postmasters of the post-towns in or nearest to such parishes in Ireland, in which the lands affected thereby shall be situate; and such certificate shall be kept by such clerks of the peace, parish clerks and postmasters respectively along with the other documents to which they relate; and thereupon such plan, book of reference, or schedule, shall be deemed to be corrected according to such certificate; and it shall be lawful for the company to make the works in accordance with such certificate.

VIII. It shall not be lawful for the company to proceed in the execution of the railway unless they shall have, previously to the commencement of such work, deposited with the clerks of the peace of the several counties in or through which the railway is intended to pass, a plan and section of all such alterations from the original plan and section as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section of the railway, and shall also have deposited with the clerks of the several parishes in England, and the postmasters of the post-towns in or nearest to such parishes in Ireland, in or through which such alterations shall have been authorized to be made, copies or extracts of or from such plans or sections as shall relate to such parishes respectively.

IX. The said clerks of the peace, parish-clerks and postmasters shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an act passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

X. True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract therefrom, certified by any such clerk of the peace, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof^(u).

XI. In making the railway, it shall not be lawful for the company to deviate from the levels of the railway as referred to the common datum line described in the section approved of by Parliament, and as marked on the same^(y), to any extent exceeding in any

8 & 9 Vict. c. 3. Under a special act, it was decided, the constables might be employed, although the Board of Trade had given a certificate authorizing the railway to be opened for traffic. *North British R. C. v. Horne*, 5 Railw. C. 231.

(t) Ante, text, 356.

(u) These plans and sections are not binding upon the company, except so far as they are referred to in the acts, ante,

text, 356; and, therefore, if a surface level is incorrectly given on a deposited section, the company are not bound thereby, *ibid.* 362. See as to the necessity of inserting a special clause in the special act to regulate surface levels, *ibid.* 356, note (f).

(x) See 26 & 27 Vict. c. 92, s. 4, post.

(y) How far the plans are binding on the company, ante, text, 356.

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place five feet, or, in passing through a town (z), village, street, or land continuously built upon, two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made; or, in case any street or public highway shall be affected by such deviation, then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or, if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gasworks, or waterworks affected by such deviation: Provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by Act of Parliament be left for roads, streets, or canals passing under the same: Provided also, that notice of every petty sessions to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required shall, fourteen days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed.

Proviso.

Proviso.

XII. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation, or to authorize the making thereof, either simply or with any such modification as shall seem proper to the Board of Trade; and after any such certificate shall have been given by the Board of Trade, it shall not be lawful for the company to make such deviation, except in conformity with such certificate.

Public notice to be given previous to making greater deviations.

Power to the owners of adjoining lands to appeal to the Board of Trade against such deviations.

XIII. Where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly; and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly (a), unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made.

Arches, tunnels, &c. to be made as marked on deposited plans.

XIV. It shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works (b) described in the said plan or section, except within the following limits, and under the following conditions: (that is to say),

Limiting deviations from gradients, curves, &c. (c).

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows: (that is to say), in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid.

It shall be lawful for the company to diminish the radius of any curve described in the said plan to any extent which shall leave a radius of not less than half a mile, or to any further extent authorized by such certificate as aforesaid from the Board of Trade.

It shall be lawful for the company to make a tunnel, not marked on the said plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorized by such certificate as aforesaid from the Board of Trade.

XV. It shall be lawful for the company to deviate from the line delineated on the plans so deposited, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the said plans (d), nor to a greater extent in passing through a town, village, or lands continuously built upon than ten yards, or

Lateral deviations.

(z) Ante, text, 178, note (i).

this section, ante, text, 373, note (l).

(a) See ante, text, 365; and 26 & 27 Vict. c. 92, s. 4, post.

(c) See also 26 & 27 Vict. c. 92, s. 4, post.

(b) What are engineering works within

(d) This deviation applies to the line of

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	elsewhere to a greater extent than one hundred yards from the said line, and that the railway by means of such deviation be not made to extend into the lands of any person, whether owner, lessee, or occupier, whose name is not mentioned in the books of reference, without the previous consent in writing of such person, unless the name of such person shall have been omitted by mistake, and the fact that such omission proceeded from mistake shall have been certified in manner herein or in the special act provided for in cases of unintentional errors in the said books of reference.
Works to be executed.	XVI. Subject to the provisions and restrictions in this and the special act, and any act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith (<i>e</i>), hereinafter mentioned, to execute any of the following works; (that is to say),
Inclined planes, &c.	They may make or construct in, upon, across, under or over any lands (<i>f</i>), or any streets, hills, valleys, roads, railroads or tramroads, rivers, canals, brooks, streams, or other waters, within the lands described in the said plans, or mentioned in the said books of reference or any correction thereof, such temporary or permanent inclined planes, tunnels (<i>g</i>), embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences as they think proper.
Alteration of course of rivers, &c.	They may alter the course of any rivers not navigable, brooks, streams, or watercourses, and of any branches of navigable rivers, such branches not being themselves navigable (<i>h</i>), within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water (<i>i</i>), roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper.
Drains, &c.	They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway.
Warehouses, &c.	They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences as they think proper.
Alterations and repairs.	They may from time to time alter, repair (<i>k</i>), or discontinue the before-mentioned works, or any of them, and substitute others in their stead; and
General power.	They may do all other acts necessary for making, maintaining, altering or repairing, and using the railway:
Proviso as to damages.	Provided always (<i>l</i>), that, in the exercise of the powers by this or the special act granted, the company shall do as little damage as can be (<i>m</i>), and shall make full satisfaction in manner herein, and in the special act, and any act incorporated therewith, provided, to all parties interested, for all damage by them sustained by reason of the exercise of such powers.
Works below high-water mark not to be executed without the consent of the Lords of the Admiralty.	XVII. It shall not be lawful for the company to construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows and re-flows, any work, or to construct any railway or bridge across any creek, bay, arm of the sea, or navigable river, where and so far up the same as the tide flows and re-flows, without the previous consent of her Majesty, her heirs and successors, to be signified in writing under the hands of two of the commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and of the Lord High Admiral of the United Kingdom of Great Britain and Ireland, or the commissioners for executing the office of Lord High Admiral aforesaid for the time being, to be signified in writing under the hand of the secretary of the admiralty, and then only according to such plan, and under such restrictions and regulations, as the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and the said Lord High

the railway only, and therefore lands for cuttings and embankments may, by consent, be taken beyond the 100 yards from the line, ante, text, 363. When lands may be taken beyond the limits of deviation without consent, *ibid.* A certificate was held to be sufficient in *Taylor v. Clemson*, 2 Q. B. 1036; 11 Cl. & Fin. 633.

(*e*) Ante, text, 378.

(*f*) Whether the land on which another railway is made may be taken, ante, text, 367. When junctions with other lines of railway may be made, *ibid.* 368.

(*g*) When permanent tunnels are made, the land must be purchased, ante, text, 369, note (*m*). Whether if a tunnel be

made under a house, the whole of the house must be purchased, *ibid.* 174, note (*x*).

(*h*) When the company are not required, as against the public, to purchase the soil of a navigable river, and as to the construction of this section generally, ante, text, 369.

(*i*) See on this subject, ante, text, 390.

(*k*) See the collected cases as to repairs of works, ante, text, 411.

(*l*) See the construction put on this proviso, ante, text, 370, note (*y*).

(*m*) An injunction, or indictment or information lies if the company disobey this provision, ante, text, 371.

Admiral, or the said commissioners, may approve of, such approval being signified as last aforesaid; and where any such work, railway, or bridge shall have been constructed, it shall not be lawful for the company at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like consents or approvals: and if any such work, railway, or bridge shall be commenced or completed contrary to the provisions of this act, it shall be lawful for the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, or the said Lord High Admiral, or the said commissioners for executing the office of Lord High Admiral, to abate and remove the same, and to restore the site thereof to its former condition, at the cost and charge of the company; and the amount thereof may be recovered in the same manner as a penalty is recoverable against the company.

XVIII. It shall be lawful for the company, for the purpose of constructing the railway, to raise, sink, or otherwise alter the position of any of the watercourses, water pipes, or gas pipes belonging to any of the houses adjoining or near to the railway, and also the mains and other pipes laid down by any company or society who may furnish the inhabitants of such houses or places with water or gas, and also to remove all other obstructions to such construction, so as the same respectively be done with as little detriment and inconvenience to such company, society, or inhabitants as the circumstances will admit, and be done under the superintendence of the company to which such water pipes or gas pipes belong, and of the several commissioners or trustees, or persons having control of the pavements, sewers, roads, streets, highways, lanes, and other public passages and places within the parish or district where such mains, pipes, or obstructions shall be situate, or of their surveyor if they or he think fit to attend, after receiving not less than forty-eight hours' notice for that purpose.

XIX. Provided always, That it shall not be lawful for the company to remove or displace any of the mains, or pipes (other than private service pipes), syphons, plugs or other works belonging to any such company or society, or to do anything to impede the passage of water or gas into or through such mains or pipes, until good and sufficient mains or pipes, syphons, plugs, and all other works necessary or proper for continuing the supply of water or gas as sufficiently as the same was supplied by the mains or pipes proposed to be removed or displaced, shall, at the expense of the company, have been first made and laid down in lieu thereof, and be ready for use, in a position as little varying from that of the pipes or mains proposed to be removed or displaced as may be consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of such water or gas company or society, or, in case of disagreement between such surveyor or engineer and the company, as a justice shall direct.

XX. It shall not be lawful for the company to lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas company or society, or to cause any road to be lowered for the purposes of the railway, without leaving a covering of not less than eighteen inches from the surface of the road over such mains or pipes.

XXI. The company shall make good all damage done to the property of the water or gas company or society, by the disturbance thereof, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the mains, pipes, or works of such water or gas company or society, or with the private service pipes of any person supplied by them with water.

XXII. If it shall be necessary to construct the railway or any of the works over any mains or pipes of any such water or gas company or society, the company shall, at their own expense, construct and maintain a good and sufficient culvert over such main or pipe, so as to leave the same accessible for the purpose of repairs.

XXIII. If by any such operations as aforesaid the company shall interrupt the supply of any water or gas, they shall forfeit twenty pounds for every day that such supply shall be so interrupted, and such penalty shall be appropriated to the benefit of the poor of the parish in which such obstruction shall occur, in such manner as the overseers of the poor of the parish shall direct.

XXIV. If any person wilfully obstruct any person acting under the authority of the company in the lawful exercise of their power, in setting out the line of the railway, or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of the railway, or deface or destroy any marks made for the same purpose, he shall forfeit a sum not exceeding five pounds for every such offence.

And whereas there are large tracts of land in Ireland subject to flood and injury by water, and the rivers, streams and watercourses are in many places obstructed by shoals, insufficient bridges, culverts, weirs and other works, whereby the waters thereof are elevated above their natural level: and whereas an Act of Parliament was passed in the second year of the reign of his late Majesty King William the Fourth, intituled "An Act to empower Landed Proprietors in Ireland to sink, embank and remove Obstructions in Rivers:" and whereas another act was passed in the sixth year of the reign of her present Majesty, intituled "An Act to promote the Drainage of Lands, and Improvement of Navigation and Water Power in connection with such Drainage, in Ireland;" and by the

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Alteration of water and gas pipes, &c.

Company not to disturb pipes until they have laid down others.

Pipes not to be laid contrary to any act, and 18 inches surface road to be retained.

Company to make good all damage.

When railway crosses pipes, company to make a culvert.

Penalty for obstructing supply of gas or water.

Penalty for obstructing construction of railway.

Drainage of Lands.

1 & 2 W. 4, c. 57.

5 & 6 Vict. c. 89.

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The company from time to time to submit to the drainage commissioners in Ireland plans, &c. of the portion of the railway which they are about to execute.

Such commissioners to investigate and report on the works necessary for drainage.

Summary application to the Court of Chancery to enforce the execution of such works.

Saving of the powers of the drainage commissioners.

The drainage commissioners in Ireland to have power to decide questions as to the execution of works or to execute works for carrying water-courses across the railway.

said last-mentioned act public commissioners were appointed to carry the said last-recited act into execution: and whereas it is essential, for carrying into effect the purposes of the said acts, and for the improvement of agriculture, that ample provision be made in all railway works in Ireland, for the free and uninterrupted passage of the waters at such level as will be sufficient not only for the present but all future discharge of the waters from lands crossed by or being on either side of such works, and that the bridges of railways crossing all watercourses, rivers, lakes, or estuaries which are or hereafter may be made navigable, shall be so constructed as to admit of the commodious navigation of the same: therefore, with respect to the provision to be made for the drainage of land in Ireland which may be crossed by the railway, and for the protection of the navigation connected therewith, be it enacted as follows:

XXV. If the special act shall authorize the construction of a railway in Ireland (*n*), the company shall and they are hereby required, from time to time, before proceeding to construct any portion of the railway, to submit to the commissioners acting in execution of the said act of the sixth year of her present Majesty, or any act amending the same, such plans, sections and surveys as shall be necessary to enable the said commissioners to decide upon the number and adequacy of the waterways of all bridges, culverts, tunnels, watercourses and other works across the line of such portion as aforesaid of the railway, for the free and uninterrupted discharge of the waters from all lands crossed by or lying on either side of or near the railway, at such a level as shall, in the opinion of the said commissioners, be sufficient for the present and prospective drainage and improvement of such lands, and (in cases of rivers, lakes, estuaries or watercourses which are now or may be capable of being made navigable) upon the height and adequacy of all bridges and works crossing the same for the commodious navigation thereof.

XXVI. The said commissioners shall, and they are hereby required, without any unnecessary delay, to investigate, by such means as to them shall seem fit, the adequacy of all such works for such purposes as aforesaid, and to decide and certify, by a writing under their hands, or the hands of any two of them, the number, situation and least possible dimensions as to breadth, depth and height of the several openings of such bridges, culverts, tunnels or other works connected with such portion of the railway as aforesaid, which shall be necessary for the passage of water or for navigation under or across such railway; and it shall not be lawful for the company to proceed with the execution of any of the works connected with any portion of the railway without having first obtained such certificate as aforesaid respecting such portion of the railway, under the hands of the said commissioners, or any two of them as aforesaid; nor shall the company be at liberty to deviate from such certificate in respect to such works, nor to execute the same otherwise than in conformity therewith, without the previous approbation in writing of the said commissioners.

XXVII. It shall be lawful for the said commissioners to apply by petition in a summary way to the Court of Chancery, complaining of any omission on the part of the company to submit such plans, sections and surveys to the said commissioners as aforesaid, or of the omission to construct any such bridge, culvert, tunnel or other works for the passage of water, in such manner as shall be so certified by the said commissioners, and thereupon it shall be lawful for the said court to direct such works to be made or constructed by the company in such manner as shall be conformable to the certificate of the said commissioners, and to the said court shall seem necessary or proper, and to make from time to time such further or other order for restraining the company or any other persons from proceeding with any of the works connected with such portion of railway, except in conformity with the certificate of the said commissioners, and to issue any writ of injunction for the purpose aforesaid; and such court shall have power to award costs to be paid by such company or persons.

XXVIII. Nothing in this or the special act shall extend or be construed to prejudice or affect the powers or authorities of the commissioners acting in execution of the said act of the sixth year of her present Majesty, but all such powers shall be in full force as to the formation of any cut, river or watercourse across the railway; but such powers shall not be exercised so as to prevent or obstruct the working or using of the railway.

XXIX. And whereas it is expedient to encourage the establishment of manufactories to be worked by water power in Ireland: be it therefore enacted, That whenever it may be requisite for the formation of a watercourse for manufacturing purposes to construct an arch, culvert, tunnel or watercourse beneath, or an aqueduct above, any railway in Ireland, and that differences shall have arisen between the directors of such railway and the person interested in obtaining the water power, either as to the manner in which such works shall be executed, or the amount of compensation which should be paid, it shall be lawful to refer the questions in issue to the commissioners acting under the said recited act of the fifth and sixth years of the reign of her Majesty Queen Victoria, and their decision thereon shall be final and conclusive; and if the said commissioners shall be of opinion that the proposed works can be executed without injury to the railway, and if they shall think proper to do so, they may undertake the execution of so much of the said

(*n*) See further special provisions as to such railways, 14 & 15 Vict. c. 70, post.

works as shall be in connection with such railway, at the expense of the parties for whose benefit the watercourse shall be made, with the same powers and authorities as are given by the said act for the execution of any works for drainage.

And with respect to the Temporary Occupation of lands near the railway during the Construction thereof, be it enacted as follows:—

XXX. Subject to the provisions herein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, to enter upon and use any existing private road, being a road gravelled or formed with stones or other hard materials, and not being an avenue or a planted or ornamental road, or an approach to any mansion-house, within the prescribed limits, if any, or, if no limits be prescribed, not being more than five hundred yards distant from the centre of the railway as delineated on the plans; but, before the company shall enter upon or use any such existing road, they shall give three weeks' notice of their intention to the owners and occupiers of such road, and of the lands over which the same shall pass, and shall in such notice state the time during which, and the purposes for which, they intend to occupy such road, and shall pay to the owners and occupiers of such road, and of the lands through which the same shall pass, such compensation for the use and occupation of such road, either in a gross sum of money or by half-yearly instalments, as shall be agreed upon between such owners and occupiers respectively and the company, or, in case they differ about the compensation, the same shall be settled by two justices, in the same manner as any compensation not exceeding fifty pounds is directed to be settled by the said Lands Clauses Consolidation Act.

XXXI. It shall be lawful for the owners and occupiers of any such road, and of the lands over which the same passes, within ten days after the service of the aforesaid notice, by notice in writing to the company to object to the company making use of such road, on the ground that other roads, such as the company are hereinbefore authorized to use for the purposes aforesaid, or that some public road would be more fitting to be used for the same; and upon the objection being so made such proceedings may be had as are hereinafter mentioned with respect to lands temporarily occupied by the company, in respect of which three weeks' notice is hereinafter required to be given, and in the same manner as if, in the provisions relative to such proceedings, the word "road" or "roads," or the words "road and the land over which the same passes," as the case may require, had been substituted in such provisions for the word "lands."

XXXII. Subject to the provisions herein and in the special act contained, it shall be lawful for the company at any time before the expiration of the period by the special act limited for the completion of the railway, without making any previous payment, tender or deposit, to enter upon any lands within the prescribed limits, or if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not being a garden, orchard or plantation attached or belonging to a house, nor a park, planted walk, avenue or ground ornamentally planted, and not being nearer to the mansion-house of the owner of any such lands than the prescribed distance, or if no distance be prescribed, then not nearer than five hundred yards therefrom, and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith, hereinafter mentioned, and to use the same for any of the following purposes: (that is to say) (o),—

For the purpose of taking earth or soil by side cuttings therefrom;

For the purpose of depositing spoil thereon;

For the purpose of obtaining materials therefrom for the construction or repair of the railway or such accommodation works as aforesaid; or

For the purpose of forming roads thereon to or from or by the side of the railway;

And in exercise of the powers aforesaid it shall be lawful for the company to deposit, and also to manufacture and work upon such lands materials of every kind used in constructing the railway, and also to dig and take from out of any such lands any clay, stone, gravel, sand or other things that may be found therein useful or proper for constructing the railway or any such roads as aforesaid, and for the purposes aforesaid to erect thereon workshops, sheds and other buildings of a temporary nature: Provided always, that nothing in this act contained shall exempt the company from an action for nuisance or other injury, if any, done in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid: Provided also, that no stone or slate quarry, brick field or other like place, which, at the time of the passing of the special act, shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the company, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

XXXIII. In case any such lands shall be required for spoil banks or for side cuttings, or for obtaining materials for the construction or repair of the railway, the company shall,

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Temporary Use of Lands.

Company may occupy temporarily private roads within five hundred yards of the railway.

Power to owners and occupiers of road and land to object that other roads should be taken.

Power to take temporary possession of land, without previous payment of price.

Company to give notice previous to such temporary possession.

(o) See as to the notice in such a case, ante, text, 204, note (p).

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before entering thereon (except in the case of accident to the railway requiring immediate reparation) give three weeks' notice in writing to the owners and occupiers of such lands of their intention to enter upon the same for such purposes (*p*); and in case the said lands are required for any of the other purposes hereinbefore mentioned, the company shall (except in the cases aforesaid) give ten days' like notice thereof, and the company shall, in such notices respectively, state the substance of the provisions hereinafter contained respecting the right of such owner or occupier to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof, as the case may be.

Service of notices on owners and occupiers of lands.

XXXIV. The said notice shall either be served personally on such owners and occupiers, or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such owner shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Power to owner to object that other lands ought to be taken.

XXXV. In any case in which a notice of three weeks is hereinbefore required to be given (*q*) it shall be lawful for the owner or occupier of the lands therein referred to, within ten days after the service of such notice, by notice in writing to the company, to object to the company making use of such lands, either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof, or of the materials contained therein, are essential to be retained by such owner, in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purposes by the company; and upon objection being so made such proceedings may be had as hereinafter mentioned.

Power to two justices to order that the lands and materials shall not be taken.

XXXVI. If the objection so made be on the ground that such lands proposed to be taken, or some part thereof, or of the materials contained therein, are essential to be retained by the owner in order to the beneficial enjoyment of other neighbouring lands belonging to him, it shall be lawful for any justice, on the application of such owner, to summon the company to appear before two justices at a time and place to be named in the summons, such time not being later than the expiration of the said twenty-one days' notice; and on the appearance of the company, or, in their absence upon proof of due service of the summons, it shall be lawful for such justices to inquire into the truth of such ground of objection; and if it appear to such justices that for some special reason, to be stated in the order after mentioned, the lands so proposed to be taken, or any part thereof, or of the materials contained therein, are essential to be retained by the owner of such lands in order to the beneficial enjoyment of other neighbouring lands belonging to him, and ought not therefore to be taken or used by the company, it shall be lawful for such justices, by writing under their hands, to order that the lands so proposed to be taken, or some part thereof, or of the materials contained therein, to be specified in such order, shall not be taken or used by the company, and, after service of such order on the company, it shall not be lawful for them to take or use, without the previous consent in writing of the owner thereof, any of the lands or materials which by such order they are ordered not to take or use.

Power to justices to order other lands to be taken.

XXXVII. If the objection so made as aforesaid be on the ground that other lands lying contiguous to those proposed to be taken, and being sufficient in quantity, and such as the company are hereinbefore authorized to use for the purposes aforesaid, would be more fitting to be used by the company, and if in such case the company shall refuse to occupy such other lands in lieu of those mentioned in the notice, it shall be lawful for any justice, on the application of such owner or occupier, to summon the company and the owners and occupiers of such other lands to appear before two justices at a time and place to be named in such summons, such time not being more than fourteen days after such application, nor less than seven days from the service of such summons; and on the appearance of the parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to determine summarily which of the said lands shall be used by the company for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

Power to the justices to summon other owners before them.

XXXVIII. If in the case last mentioned it shall appear to such justices, upon the inquiry before them, that the lands of any other party not summoned before them, being sufficient in quantity, and such as the company are hereinbefore authorized to take or use for the purposes aforesaid, would be more fitting to be used by the company than the lands of the person who shall have been so summoned as aforesaid, it shall be lawful for the said justices to adjourn such inquiry, and to summon such other person to appear before them at any time, not being more than fourteen days from such inquiry nor less than seven from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, on proof of due service of the summons, it shall be lawful for such justices to determine finally which lands shall be used for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

(*p*) Ante, text, 203.

(*q*) See sect. 30, 33, ante, 81.

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XXXIX. Before entering, under the provisions hereinbefore contained, upon any such lands as shall be required for spoil banks or for side cuttings, or for obtaining materials or forming roads as aforesaid, the company shall, if required by the owner or occupier thereof, seven days at least before the expiration of the notice to take such lands as hereinbefore mentioned, find two sufficient persons, to be approved of by a justice, in case the parties differ, who shall enter into a bond to such owner or occupier, in a penalty of such amount as shall be approved of by such justice, in case the parties differ, conditioned for the payment of such compensation as may become payable in respect of the same in manner herein mentioned.

The company to give sureties, if required.

XL. Before the company shall use any such lands for any of the purposes aforesaid, they shall, if required to do so by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto, with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also, to all private roads used by them as aforesaid, put up fences and gates in like manner, in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads, and in case of any difference between the owners or occupiers of such roads and lands and the company as to the necessity for such fences and gates, such fences and gates as any two magistrates shall deem necessary for the purposes aforesaid, on application being made to them in like manner as hereinbefore is provided in respect to the use of such roads.

Company to separate the lands before using them.

XLI. That, if any land shall be taken or used by the company, under the provisions of this or the special act, for the purpose of getting materials therefrom for the construction or repair of the railway, or the accommodation works connected therewith, they shall work the same in such manner as the surveyor or agent of the owner of such land shall direct, or, in case of disagreement between such surveyor or agent and the company, in such manner as any justice shall direct, on the application of either party, after notice of the hearing the application shall have been given to the other party.

Lands taken for getting materials, &c. to be worked as the surveyor of owner may direct.

XLII. In all cases in which the company shall, in exercise of the powers aforesaid, enter upon any lands for the purpose of making spoil banks or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, it shall be lawful for the owners or occupiers of such lands, or parties having such estates or interests therein as, under the provisions in the said Lands Clauses Consolidation Act mentioned, would enable them to sell or convey lands to the company, at any time during the possession of any such lands by the company, and before such owners or occupiers shall have accepted compensation from the company in respect of such temporary occupation, to serve a notice in writing on the company requiring them to purchase the said lands, or the estates and interests therein capable of being sold and conveyed by them respectively; and in such notice such owners or occupiers shall set forth the particulars of such their estate or interest in such lands, and the amount of their claim in respect thereof; and the company shall thereupon be bound to purchase the said lands, or the estate and interest therein capable of being sold and conveyed by the parties serving such notice.

Owners of lands may compel company to purchase lands so temporarily occupied.

XLIII. In any of the cases aforesaid, where the company shall not be required to purchase such lands, and in all other cases where they shall take temporary possession of lands by virtue of the powers herein or in the special act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands, and shall also, from time to time during their occupation of the said lands, pay half-yearly to such occupier or to the owner of the lands, as the case may require, a rent to be fixed by two justices, in case the parties differ, and shall also within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special act limited for the completion of the railway, pay to such owner and occupier, or deposit in the Bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers herein, or in the special act granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands.

Compensation to be made for temporary occupation.

XLIV. The amount and application of the purchase-money and other compensation payable by the company in any of the cases aforesaid shall be determined in the manner provided by the said Lands Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

Compensation to be ascertained under the Lands Clauses Act.

XLV. And be it enacted, That it shall be lawful for the company, in addition to the lands authorized to be compulsorily taken by them under the powers of this or the special act, to contract with any party willing to sell the same, for the purchase of any land adjoining or near to the railway, not exceeding in the whole the prescribed number of acres, for extraordinary purposes; (that is to say,)

Lands for additional Stations.

Land to be taken for additional stations, &c.

For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and loading or

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unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing-machines, toll-houses, offices, warehouses and other buildings and conveniences ;

For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

*Crossing of
Roads and Con-
struction of
Bridges.*

*Crossing of
roads.*

And with respect to the crossing of roads, or other interference therewith (*r*), be it enacted as follows:—

XLVI. If the line of the railway cross any turnpike road or public highway, then (except where otherwise provided by the special act) either such road shall be carried over the railway, or (*s*) the railway shall be carried over such road, by means of a bridge of the height and width, and with the ascent or descent, by this or the special act in that behalf provided ; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed, and at all times thereafter maintained (*t*), at the expense of the company : provided always, that, with the consent of two or more justices in petty sessions, as after mentioned (*u*), it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level.

*Provision in cases
where roads are
crossed on a level.*

XLVII. If the railway cross any turnpike road or public carriage road on a level, the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway, where the same shall communicate therewith, and shall employ proper persons to open and shut such gates, and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts or carriages passing along the same shall have to cross such railway ; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway ; and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts or carriages shall have passed through the same, under a penalty of forty shillings for every default therein : provided always, that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the roads.

*As to crossing of
turnpike roads
adjoining
stations.*

XLVIII. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour ; and the company shall be subject to all such rules and regulations, with regard to such crossings, as may from time to time be made by the Board of Trade (*y*).

*Construction of
bridges over
roads.*

XLIX. Every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special act) be built in conformity with the following regulations (that is to say),

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a turnpike road (*z*), and of twenty-five feet if over a public carriage road (*a*), and of twelve feet if over a private road ;

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road ; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet ;

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road ;

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road, not being a tramroad or railroad, or, if the same be a tramroad or railroad, the descent shall not be greater than the prescribed rate of inclination, and, if no rate be prescribed, the same shall not be greater than as it existed at the passing of the special act.

(*r*) See the collection of cases on this subject, ante, text, 404.

(*s*) As to the right of the company to exercise this option, ante, text, 373, note (*p*) ; and on this section generally, *ibid*.

(*t*) See ante, text, 374, note (*r*).

(*u*) Sect. 59.

(*y*) See the decided cases as to the construction of bridges, ante, text, 394.

(*z*) What is a turnpike road, ante, text, 374, note (*t*).

(*a*) The road is to be measured without including the footways on either side, ante, text, 398.

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L. Every bridge (*b*) erected for carrying any road (*c*) over the railway shall (except as otherwise provided by the special act) be built in conformity with the following regulations (that is to say),

Construction of bridges over railway.

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each side of the immediate approaches of such bridge of not less than three feet;

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road;

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road, one foot in twenty feet if a public carriage road (*d*), and one foot in sixteen feet if a private carriage road, not being a tramroad or railroad, or, if the same be a tramroad or railroad, the ascent shall not be greater than the prescribed rate of inclination, and, if no rate be prescribed, the same shall not be greater than as it existed at the passing of the special act.

LI. Provided always, That, in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges under or over the railway, the width of such bridges need not be greater than such average available width of such roads, but so, nevertheless, that such bridges be not of less width, in the case of a turnpike road or public carriage road, than twenty feet: Provided also, that, if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or the maximum width herein or in the special act prescribed for a bridge in the like case over or under the railway (*e*).

The width of the bridges need not exceed the width of the road in certain cases.

LII. Provided also, That, if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination hereinbefore required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

Existing inclinations of roads crossed or diverted need not be improved.

LIII. If, in the exercise of the powers by this or the special act granted, it be found necessary to cross, cut through, raise, sink or use any part of any road, whether carriage road, horse road, tramroad or railway, either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be (*f*).

Before roads interfered with, others to be substituted.

LIV. If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted; and such penalty shall be paid to the trustees, commissioners, surveyor or other person having the management of such road, if a public road, and shall be applied for the purposes thereof, or, in case of a private road, the same shall be paid to the owner thereof, and every such penalty shall be recoverable, with costs, by action in any of the superior courts (*g*).

Penalty for not substituting a road.

LV. If any party, entitled to a right of way over any road so interfered with by the company, shall suffer any special damage (*h*) by reason that the company shall fail to cause another sufficient road to be made before they interfere with the existing road, it shall be lawful for such party to recover the amount of such special damage from the company, with costs, by action on the case in any of the superior courts, and that, whether any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same.

Party suffering damage from interruption of road to recover in an action on the case.

LVI. If the road so interfered with can be restored compatibly with the formation and use of the railway, the same shall be restored to as good a condition as the same was in at the time when the same was first interfered with by the company, or as near thereto as

Period for restoration of roads interfered with.

(*b*) When the special act required a company to strengthen an existing bridge, it was held no departure from the meaning of the act, to pull it down and rebuild another, ante, text, 402.

(*c*) See the decided cases as to diversion of roads, ante, text, 404.

(*d*) See ante, text, 401.

(*e*) See ante, 399—405.

(*f*) See the cases, ante, text, 399, 401, 403, 405, 406, 410.

(*g*) See ante, text, 376.

(*h*) No action will lie, unless special damage be sustained, ante, text, 376, n. (*e*).

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may be; and if such road cannot be restored compatibly with the formation and use of the railway, the company shall cause the new or substituted road, or some other sufficient substituted road (*i*), to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow; and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, unless the trustees or parties having the management of the road to be restored, by writing under their hands, consent to an extension of the period, and, in such case, within such extended period; (that is to say,) if the road be a turnpike road, within such six months, and, if the road be not a turnpike road, within twelve months.

Penalty for failing to restore road.

LVII. If any such road be not so restored, or the substituted road so completed, as aforesaid, within the periods herein or in the special act fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor or other person having the management of the road interfered with by the company, if a public road, or, if a private road, to the owner thereof, five pounds for every day after the expiration of such periods respectively during which such road shall not be so restored, or the substituted road completed; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole, or any part thereof, to be laid out in executing the work in respect whereof such penalty was incurred.

Company to repair roads used by them.

LVIII. If, in the course of making the railway, the company shall use or interfere with any road (*j*), they shall from time to time make good all damage done by them to such road; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, such question shall be referred to the determination of two justices; and such justices may direct such repairs to be made in the state of such road, in respect of the damage done by the company (*k*), and within such period as they think reasonable, and may impose on the company, for not carrying into effect such repairs, any penalty not exceeding five pounds per day, as to such justices shall seem just; and such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the company, if a public road, and be applied for the purposes of such road, or, if a private road, the same shall be paid to the owner thereof: Provided always, that, in determining any such question with regard to a turnpike road, the said justices shall have regard to and shall make full allowance for any tolls that may have been paid by the company on such road in the course of the using thereof.

Proceedings on application to justices to consent to level crossings of bridleways and footways.

LIX. When the company shall intend to apply for the consent of two justices, as hereinbefore provided (*l*), so as to authorize them to carry the railway across any highway other than a public carriage road on the level, they shall, fourteen days at least previous to the holding of the petty sessions at which such application is intended to be made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church of the parish in which such crossing is intended to be made, or, if there be no such church, some other place to which notices are usually affixed; and if it appear to any two or more justices acting for the district in which such highway, at the proposed crossing thereof, is situate, and assembled in petty sessions, after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across such highway on the level, it shall be lawful for such justices to consent that the same may be so carried accordingly.

Appeal against the determination of the justices.

LX. If either party shall feel aggrieved by the determination of such justices upon any such application as aforesaid, it shall be lawful for such party, in like manner, and subject to the like conditions as are hereinafter provided in the case of appeals, in respect of penalties and forfeitures (*m*), to appeal to the quarter sessions of the county or place in which the cause of appeal shall have arisen; and it shall be lawful for the justices in such quarter sessions, upon the hearing of such appeal, either to confirm or quash the determination, or to make such other order in regard to the method of carrying the railway across such highway as aforesaid as to them shall seem fit, and to make such order concerning the costs both of the original application and of the appeal as to them shall seem reasonable.

Company to make sufficient approaches and fences to bridleways and footways crossing on the level.

LXI. If the railway shall cross any highway other than a public carriage-way on the level, the company shall at their own expense make and at all times maintain convenient ascents and descents and other convenient approaches, with handrails or other fences, and shall, if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and, if the same shall be a footway, good and sufficient gates or stiles, on each side of the railway where the highway shall communicate therewith.

(*i*) What is a sufficient substituted road under this section, see note (*f*), supra. What remedies may be resorted to for a breach of this provision, *ibid*.

(*j*) Ante, text, 376.

(*k*) What is a good conviction within this section, ante, text, 377, note (*i*).

(*l*) Sect. 46.

(*m*) Post, s. 157.

LXII. If, where the railway shall cross any highway on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fence, gates and stiles as they are hereinbefore required to make, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company, to order the company to make such ascent and descent or other approach, or such handrails, fences, gates or stiles as aforesaid, within a period to be limited for that purpose by such justices; and, if the company fail to comply with such order, they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred.

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Justices to have power to order approaches and fences to be made to highways crossing on the level.

LXIII. If the commissioners or trustees of any turnpike road, or the surveyor of any highway, apprehend danger to the passengers on such road in consequence of horses being frightened by the sight of the engines or carriages travelling upon the railway, it shall be lawful for such commissioners, or trustees, or surveyor, after giving fourteen days' notice to the company, to apply to the Board of Trade with respect thereto; and if it shall appear to the said Board that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of such road, it shall be lawful for them, if they shall think fit, to certify the works necessary or proper to be executed by the company for the purpose of obviating or lessening such danger, and by such certificate to require the company to execute such works within a certain time after the service of such certificate, to be appointed by the said board.

Screens for Turnpike Roads.

Screens for roads to be made, if required by the Board of Trade.

LXIV. Where, by any such certificate as aforesaid, the company shall have been required to execute any such work in the nature of a screen, they shall execute and complete the same within the period appointed for that purpose in such certificate; and, if they fail so to do, they shall forfeit to the said commissioners, or trustees, or surveyor, five pounds for every day during which such works shall remain uncompleted beyond the period so appointed for their completion; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

Penalty for failing to construct.

LXV. Where, under the provisions of this or the special act, or any act incorporated therewith, the company are required to maintain or keep in repair any bridge, fence, approach, gate or other work executed by them, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders of the parish or district where such work may be situate, complaining that any such work is out of repair, after not less than ten days' notice to the company, to order the company to put such work into complete repair within a period to be limited for that purpose by such justices; and, if the company fail to comply with such order, they shall forfeit five pounds for every day that they fail so to do (n): and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such person as they think fit, in putting such work into repair.

Construction of Bridges.

Justices to have power to order repair of bridges, &c.

LXVI. And whereas expense might frequently be avoided, and public convenience promoted, by a reference to the Board of Trade upon the construction of public works of an engineering nature connected with the railway, where a strict compliance with the provisions of this or the special act might be impossible, or attended with inconvenience to the company, and without adequate advantage to the public; be it enacted, That, in case any difference in regard to the construction, alteration or restoration of any road or bridge, or other public work of an engineering nature, required by the provisions of this or the special act, shall arise between the company and any trustees, commissioners, surveyors or other persons having the control of or being authorized by law to enforce the construction of such road, bridge or work, it shall be lawful for either party, after giving fourteen days' notice in writing of their intention so to do to the other party, to apply to the Board of Trade to decide upon the proper manner of constructing, altering or restoring such road, bridge or other work; and it shall be lawful for the Board of Trade, if they shall think fit, to decide the same accordingly, and to authorize, by certificate in writing, any arrangement or mode of construction in regard to any such road, bridge or other work which shall appear to them either to be in substantial compliance with the provisions of this and the special act, or to be calculated to afford equal or greater accommodation to the public using such road, bridge or other work; and after any such certificate shall have been given by the Board of Trade, the road, bridge, or other work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and, being so constructed, shall be deemed to be constructed in conformity with the provisions of this and the special act: Provided always, that no such certificate shall be granted by the

Board of Trade empowered to modify the construction of certain roads, bridges, &c., where a strict compliance with the act is impossible or inconvenient.

(n) See *Bristol and Exeter R. Co. v. Tucker*, 13 C. B. (N. S.) 207; 7 Law T. (N. S.) 464, where a conviction under this sect. and sect. 145 was affirmed.

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Authentication of
certificates of the
Board of Trade,
service of notices,
&c.

Board of Trade unless they shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

LXVII. And be it enacted, That all regulations, certificates, notices, and other documents in writing purporting to be made or issued by or by the authority of the Board of Trade, and signed by some officers appointed for that purpose by the Board of Trade, shall, for the purposes of this and the special act, and any act incorporated therewith, be deemed to have been so made and issued, and that without proof of the authority of the person signing the same, or of the signature thereto, which matters shall be presumed until the contrary be proved; and service of any such document by leaving the same at one of the principal offices of the railway company, or by sending the same by post addressed to the secretary at such office, shall be deemed good service upon the company; and all notices and other documents required by this or the special act to be given to or laid before the Board of Trade shall be delivered at, or sent by post addressed to, the office of the Board of Trade in London.

Works for Protec-
tion and Accom-
modation of
Lands.

And with respect to Works for the Accommodation of lands adjoining the railway, be it enacted as follows:—

LXVIII. The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway (*o*); (that is to say),

Gates, bridges,
&c.;

Such and so many convenient gates, bridges, arches, culverts and passages over, under or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof;

fences;

Also sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or the occupiers thereof from straying thereout (*p*), by reason of the railway, together with all necessary gates made to open towards such adjoining lands (*q*), and not towards the railway, and all necessary stiles; and such posts, rails and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be;

drains;

Also all necessary arches, tunnels, culverts, drains or other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be; and such works shall be made from time to time as the railway works proceed;

watering-places.

Also proper watering-places for cattle, where, by reason of the railway, the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering-places; and such watering-places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be; and the company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places (*r*):

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

Differences as to
accommodation
works to be
settled by jus-
tices.

LXIX. If any difference arise respecting the kind or number of any such accommodation works, or the dimensions or sufficiency thereof, or respecting the maintaining thereof, the same shall be determined by two justices; and such justices shall also appoint the time within which such works shall be commenced and executed by the company.

Execution of
works by owners
on default by the
company.

LXX. If for fourteen days next after the time appointed by such justices for the commencement of any such works the company shall fail to commence such works, or having commenced, shall fail to proceed diligently to execute the same in a sufficient manner, it shall be lawful for the party aggrieved by such failure himself to execute such works or repairs; and the reasonable expenses thereof shall be repaid by the company to the party by whom the same shall so have been executed; and, if there be any dispute about such expenses, the same shall be settled by two justices: Provided always, that no such owner or occupier or other person shall obstruct or injure the railway, or any of the works connected therewith, for a longer time, nor use them in any other manner, than is unavoidably necessary for the execution or repair of such accommodation works.

(*o*) These works are irrespective of the claim for compensation, ante, text, 378.

(*p*) See the extent of this obligation considered, and the cases thereon, ante,

text, 378, note (*t*).

(*q*) See other provisions as to gates in certain cases, ante, text, 441.

(*r*) Ante, text, 379.

LXXI. If any of the owners or occupiers of lands affected by such railway shall consider the accommodation works made by the company, or directed by such justices to be made by the company, insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at any time, at his own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the company, or, in case of difference, as shall be authorized by two justices.

LXXII. If the company so desire, all such last-mentioned accommodation works shall be constructed under the superintendence of their engineer, and according to plans and specifications to be submitted to and approved by such engineer; nevertheless the company shall not be entitled to require, either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the company, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the company.

LXXIII. The company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the railway after the expiration of the prescribed period, or, if no period be prescribed, after five years from the completion of the works, and the opening of the railway for public use.

LXXIV. Until the company shall have made the bridges or other proper communications which they shall, under the provisions herein, or in the special act, or any act incorporated therewith, contained, have been required to make between lands intersected by the railway, and no longer, the owners and occupiers of such lands, and any other persons whose right of way shall be affected by the want of such communication, and their respective servants, may at all times freely pass and repass, with carriages, horses and other animals, directly (but not otherwise) across the part of the railway made in or through their respective lands, solely for the purpose of occupying the same lands, or for the exercise of such right of way, and so as not to obstruct the passage along the railway, or to damage the same; nevertheless if the owner or occupier of any such lands have in his arrangements with the company received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier, or those claiming under him, shall not be entitled so to cross the railway.

LXXV. If any person omit to shut and fasten any gate set up at either side of the railway, for the accommodation of the owners or occupiers of the adjoining lands, as soon as he, and the carriage, cattle or other animals, under his care, have passed through the same, he shall forfeit for every such offence any sum not exceeding forty shillings.

LXXVI. And be it enacted, That this or the special act shall not prevent the owners or occupiers of lands adjoining to the railway, or any other persons, from laying down, either upon their own lands or upon the lands of other persons, with the consent of such persons, any collateral branches of railway to communicate with the railway, for the purpose of bringing carriages to or from or upon the railway, but under and subject to the provisions and restrictions of an act passed in the sixth year of the reign of her present Majesty, intituled "An Act for the better Regulation of Railways, and for the Conveyance of Troops;" and the company shall, if required, at the expense of such owners and occupiers and other persons, and subject also to the provisions of the said last-mentioned act, make openings in the rails, and such additional lines of rail as may be necessary for effecting such communication in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereon; and the company shall not take any rate or toll or other monies for the passing of any passengers, goods or other things, along any branch so to be made by any such owner or occupier or other person; but this enactment shall be subject to the following restrictions and conditions: (that is to say,)

No such branch railway shall run parallel to the railway;

The company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, nor upon any inclined plane or bridge, nor in any tunnel;

The persons making or using such branch railways shall be subject to all bye-laws and regulations of the company from time to time made with respect to passing upon or crossing the railway, and otherwise; and the persons making or using such branch railways shall be bound to construct, and from time to time, as need may require, to renew, the offset plates and switches according to the most approved plan adopted by the company, and under the direction of their engineer.

And with respect to Mines lying under or near the railway, be it enacted as follows (s):—

LXXVII. The company shall not be entitled to any mines of coal, ironstone, slate or other minerals under any land purchased by them, except only such parts thereof as shall

APPENDIX.

Power to owners of land to make additional accommodation works.

Such works to be constructed under the superintendence of the company's engineer.

Accommodation works not to be required after five years.

Owners to be allowed to cross until accommodation works are made.

Penalty on persons omitting to fasten gates.

Branch Railways.

Power to parties to make private branch railways communicating with the railway.

5 & 6 Vict. c. 55, ante, p. 10.

Restrictions and conditions.

Working of Mines.

Company not to be entitled to minerals.

(s) For the cases relating to damage done to mines, see ante, text, 171, 232.

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Mines lying near the railway not to be worked if the company willing to purchase them.

If company unwilling to purchase, owner may work the mines.

Mining communications.

Company to make compensation for injury done to mines ;

and also for any airway or other work made necessary by the railway.

Power to company to enter and inspect the working of mines.

Penalty for refusal to inspect.

be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased ; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

LXXVIII. If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do thirty days before the commencement of working ; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose ; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for such mines or any part thereof to such owner, lessee or occupier thereof, then he shall not work or get the same ; and if the company, and such owner, lessee or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

LXXIX. If before the expiration of such thirty days the company do not state their willingness to treat with such owner, lessee or occupier for the payment of such compensation, it shall be lawful for him to work the said mines or any part thereof for which the company shall not have agreed to pay compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate ; and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee or occupier of such mines or minerals, and at his own expense ; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the superior courts.

LXXX. If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways or water levels through the mines, measures or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain and work their said mines ; but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and, where no dimensions shall be described, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

LXXXI. The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to lie on both sides of the railway all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway ; and if any dispute or question shall arise between the company and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expenses, the same shall be settled by arbitration.

LXXXII. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner, lessee, or occupier of such mines), by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

LXXXIII. For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith ; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

LXXXIV. If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect

any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

LXXXV. If it appear that any such mines have been worked contrary to the provisions of this or the special act, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice any such owner, lessee or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expense thereof from such owner, lessee, or occupier, by action in any of the superior courts.

And with respect to the carrying of Passengers and Goods (*t*) upon the railway, and the Tolls to be taken thereon, be it enacted as follows:—

LXXXVI. It shall be lawful for the company to use and employ locomotive engines or other moving power (*x*), and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the railway all such passengers (*y*) and goods (*z*) as shall be offered to them for that purpose, and to make such reasonable charges in respect thereof as they may from time to time determine upon, not exceeding the tolls by the special act authorized to be taken by them (*a*).

LXXXVII. It shall be lawful for the company from time to time to enter into any contract with any other company, being the owners or lessees or in possession of any other railway, for the passage over or along the railway by the special act authorized to be made of any engines, coaches, waggons or other carriages of any other company, or which shall pass over any other line of railway, or for the passage over any other line of railway of any engines, coaches, waggons or other carriages of the company, or which shall pass over their line of railway, upon the payment of such tolls and under such conditions and restrictions as may be mutually agreed upon (*b*); and for the purpose aforesaid it shall be lawful for the parties to enter into any contract for the division or apportionment of the tolls to be taken upon their respective railways.

LXXXVIII. Provided always, That no such contract as aforesaid shall in any manner alter, affect, increase or diminish any of the tolls which the respective companies, parties to such contracts, shall for the time being be respectively authorized and entitled to demand or receive from any person or any other company, but that all other persons and companies shall, notwithstanding any such contract, be entitled to the use and benefit of any of the said railways, upon the same terms and conditions, and on payment of the same tolls as they would have been in case no such contract had been entered into.

LXXXIX. Nothing in this or the special act contained shall extend to charge or make liable the company further or in any other case than where, according to the laws of the realm, stage-coach proprietors and common carriers would be liable (*c*), nor shall extend in any degree to deprive the company of any protection or privilege which common carriers or stage-coach proprietors may be entitled to; but, on the contrary, the company shall at all times be entitled to the benefit of every such protection and privilege.

XC. And whereas it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular parties: it shall be lawful, therefore, for the company, subject to the provisions and limitations herein and in the special act contained, from time to time to alter or vary the tolls by the special act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit: Provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton per mile or otherwise, in respect of all passengers and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the railway (*d*).

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If mines improperly worked, the company may require means to be adopted for the safety of the railway.

Passengers and Goods on Railway.

Company to employ locomotive power, carriages, &c.

Company empowered to contract with other companies.

Contracts not to affect persons not parties thereto.

Company not to be liable to a greater extent than common carriers.

Power to vary tolls.

Tolls to be charged equally under like circumstances.

(*t*) See as to the liabilities of the company, as carriers of goods and passengers, ante, text, 497.

(*x*) When the company are liable to be sued if injury arises from accidental fire, caused by the running of steam engines, ante, text, 539.

(*y*) As to the rights of passengers to sue the company for injuries caused by negligence, ante, text, 529.

(*z*) Supra, note (*t*).

(*a*) See where special contracts for the carrying of cattle, &c. may be made, and the decisions thereon, ante, text, 507.

(*b*) See *Great Northern R. Co. v. Eastern Counties R. Co.*, 9 Hare, 306; 21 Law J. (Ch.) 837; *South Yorkshire R. Co. v. Great Northern R. Co.*, 22 Law J. (Exch.) 305.

(*c*) See the Carriers' Act, and the decisions thereon, ante, text, 510.

(*d*) See the decided cases, ante, text, 498, note (*g*).

APPENDIX.

How tolls to be calculated where railways amalgamated.

Railway to be free on payment of tolls.

5 & 6 Vict. c. 55, ante, p. 10.

List of tolls to be exhibited on a board.

Milestones.

Tolls to be taken only whilst board exhibited and milestones set up.

Tolls to be paid as directed by the company.

In default of payment of tolls, goods, &c., may be detained and sold.

Account of lading, &c. to be given.

Penalty for not giving account of lading.

Disputes as to amount of tolls chargeable.

XCI. And whereas authority has been given by various acts of Parliament to railway companies to demand tolls for the conveyance of passengers and goods, and for other services, over the fraction of a mile equal to the toll which they are authorized to demand for one mile; therefore, in cases in which any railway shall be amalgamated with any other adjoining railway or railways (*e*), such tolls shall be calculated and imposed at such rates as if such amalgamated railways had originally formed one line of railway.

XCII. It shall not be lawful for the company at any time to demand or take a greater amount of toll, or make any greater charge for the carriage of passengers or goods, than they are by this and the special act authorized to demand; and upon payment of the tolls from time to time demandable, all companies and persons shall be entitled to use the railway, with engines and carriages properly constructed as by this and the special act directed, subject nevertheless to the provisions and restrictions of the said act of the sixth year of her present Majesty, intituled "An Act for the better Regulation of Railways, and for the Conveyance of Troops," and to the regulations to be from time to time made by the company by virtue of the powers in that behalf hereby and by the special act conferred upon them.

XCIII. A list of all the tolls authorized by the special act to be taken, and which shall be exacted by the company, shall be published by the same being painted upon one toll-board or more in distinct black letters on a white ground, or white letters on a black ground, or by the same being printed in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place on the stations or places where such tolls shall be made payable.

XCIV. The company shall cause the length of the railway to be measured, and milestones, posts or other conspicuous objects to be set up and maintained along the whole line thereof, at the distance of one quarter of a mile from each other, with numbers or marks inscribed thereon denoting such distances.

XCV. No tolls shall be demanded or taken by the company for the use of the railway during any time at which the boards hereinbefore directed to be exhibited shall not be so exhibited, or at which the milestones hereinbefore directed to be set up and maintained shall not be so set up and maintained; and if any person wilfully pull down, deface or destroy any such board or milestone he shall forfeit a sum not exceeding five pounds for every such offence.

XCVI. The tolls shall be paid to such persons and at such places upon or near to the railway, and in such manner and under such regulations, as the company shall, by notice to be annexed to the list of tolls, appoint.

XCVII. If, on demand, any person fail to pay the tolls due in respect of any carriage or goods, it shall be lawful for the company to detain and sell such carriage, or all or any part of such goods, or if the same shall have been removed from the premises of the company, to detain and sell any other carriages or goods within such premises belonging to the party liable to pay such tolls, and out of the monies arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, of the monies arising by such sale, and such of the carriages or goods as shall remain unsold, to the person entitled thereto; or it shall be lawful for the company to recover any such tolls by action at law.

XCVIII. Every person being the owner or having the care of any carriage or goods passing or being upon the railway shall, on demand, give to the collector of tolls, at the places where he attends for the purpose of receiving goods or of collecting tolls for the part of the railway on which such carriage or goods may have travelled, or be about to travel, an exact account in writing, signed by him, of the number or quantity of goods conveyed by any such carriage, and of the point on the railway from which such carriage or goods have set out, or are about to set out, and at what point the same are intended to be unloaded or taken off the railway; and if the goods conveyed by any such carriage, or brought for conveyance as aforesaid, be liable to the payment of different tolls, then such owner or other person shall specify the respective numbers or qualities thereof liable to each or any of such tolls.

XCIX. If any such owner or other such person fail to give such account, or to produce his way-bill or bill of lading, to such collector or other officer or servant of the company demanding the same, or if he give a false account, or if he unload or take off any part of his lading or goods at any other place than shall be mentioned in such account, with intent to avoid the payment of any tolls payable in respect thereof, he shall for every such offence forfeit to the company a sum not exceeding ten pounds for every ton of goods, or for any parcel not exceeding one hundred weight, and so in proportion for any less quantity of goods than one ton, or for any parcel exceeding one hundred weight (as the case may be) which shall be upon any such carriage; and such penalty shall be in addition to the toll to which such goods may be liable.

C. If any dispute arise concerning the amount of the tolls due to the company, or concerning the charges occasioned by any detention or sale thereof under the provisions herein or in the special act contained, the same shall be settled by a justice; and it shall be law-

(*e*) As to railway amalgamations generally, ante, text, 492.

ful for the company in the meanwhile to detain the goods, or (if the case so require) the proceeds of the sale thereof.

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CI. If any difference arise between any toll-collector or other officer or servant of the company and any owner of or person having the charge of any carriage passing or being upon the railway, or of any goods conveyed or to be conveyed by such carriage, respecting the weight, quantity, quality or nature of such goods, such collector or other officer may lawfully detain such carriage or goods, and examine, weigh, gauge or otherwise measure the same; and if upon such measuring or examination such goods appear to be of greater weight or quantity, or of other nature than shall have been stated in the account given thereof, then the person who shall have given such account shall pay, and the owner of such carriage, or the respective owners of such goods, shall also, at the option of the company, be liable to pay the costs of such measuring and examining; but if such goods appear to be of the same or less weight or quantity than, and of the same nature as shall have been stated in such account, then the company shall pay such costs, and they shall also pay to such owner of or person having charge of such carriage, and to the respective owners of such goods, such damage (if any) as shall appear to any justice, on a summary application to him for that purpose, to have arisen from such detention.

Differences as to weights, &c.

CII. If at any time it be made to appear to any justice, upon the complaint of the company, that any such detention, measuring or examining of any carriage or goods, as hereinbefore mentioned, was without reasonable ground, or that it was vexatious on the part of such collector or other officer, then the collector or other officer shall himself pay the costs of such detention and measuring, and the damage occasioned thereby; and in default of immediate payment of any such costs or damage, the same may be recovered by distress of the goods of such collector, and such justice shall issue his warrant accordingly.

Toll-collector to be liable for wrongful detention of goods.

CIII. If any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit to the company a sum not exceeding forty shillings.

Penalty on passengers practising frauds on the company.

CIV. If any person be discovered either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned, all officers and servants and other persons on behalf of the company, or such other company or party as aforesaid, and all constables, gaolers and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law.

Detention of offenders.

CV. No person shall be entitled to carry or to require the company to carry upon the railway any aquafortis, oil of vitriol, gunpowder, lucifer matches or any other goods which in the judgment of the company may be of a dangerous nature; and if any person send by the railway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same are left, at the time of so sending, he shall forfeit to the company twenty pounds for every such offence; and it shall be lawful for the company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Penalty for bringing dangerous goods on the railway.

CVI. If any collector of tolls, or other officer employed by the company, be discharged or suspended from his office, or die, abscond or absent himself, and if such collector or other officer, or the wife, widow or any of the family or representatives of any such collector or other officer, refuse or neglect, after seven days' notice in writing for that purpose, to deliver up to the company, or to any person appointed by them for that purpose, any station, dwelling-house, office or other building, with its appurtenances, or any books, papers or other matters belonging to the company in the possession or custody of any such collector or officer at the occurrence of any such event as aforesaid, then, upon application being made by the company to any justice, it shall be lawful for such justice to order any constable, with proper assistance, to enter upon such station or other building, and to remove any person found therein, and to take possession thereof, and of any such books, papers or other matters, and to deliver the same to the company, or any person appointed by them for that purpose.

Delivery of matters in possession or custody of toll collector at removal.

CVII. And be it enacted, That the company shall every year cause an annual account in abstract to be prepared, showing the total receipts and expenditure of all funds levied by virtue of this or the special act for the year ending on the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the directors, or some of them, and by the auditors, and shall, if required, transmit

Annual account to be made up, and a copy transmitted to the clerk of the peace, &c.

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a copy of the said account, free of charge, to the overseers of the poor of the several parishes through which the railway shall pass, and also to the clerks of the peace of the counties through which the railway shall pass, on or before the thirty-first day of January then next; which last-mentioned account shall be open to the inspection of the public at all seasonable hours, on payment of the sum of one shilling for every such inspection: Provided always, that if the said company shall omit to prepare or transmit such account as aforesaid, if required so to do by any such clerk of the peace or overseers of the poor, they shall forfeit for every such omission the sum of twenty pounds.

Bye-Laws.

Company to regulate the use of the railway.

And with respect to the Regulating of the Use of the Railway, be it enacted as follows:—

CVIII. It shall be lawful for the company, from time to time, subject to the provisions and restrictions in this and the special act contained, to make regulations for the following purposes; (that is to say,)

For regulating the mode by which, and the speed at which, carriages using the railway are to be moved or propelled;

For regulating the times of the arrival and departure of any such carriages;

For regulating the loading or unloading of such carriages, and the weights which they are respectively to carry;

For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages;

For preventing the smoking of tobacco, and the commission of any other nuisance in or upon such carriages, or in any of the stations or premises occupied by the company;

And, generally, for regulating the travelling upon, or using and working of the railway: But no such regulation shall authorize the closing of the railway, or prevent the passage of engines or carriages on the railway at reasonable times, except at any time when, in consequence of any of the works being out of repair, or from any other sufficient cause, it shall be necessary to close the railway, or any part thereof.

Power to make regulations by bye-laws.

3 & 4 Vict. c. 97, ante, p. 7.

CIX. For better enforcing the observance of all or any of such regulations, it shall be lawful for the company, subject to the provisions of an act passed in the fourth year of the reign of her present Majesty, intituled "An Act for regulating Railways," to make bye-laws, and from time to time to repeal or alter such bye-laws, and make others, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and any person offending against any such bye-law shall forfeit for every such offence any sum not exceeding five pounds, to be imposed by the company in such bye-laws as a penalty for any such offence; and if the infraction or non-observance of any such bye-law, or other such regulation as aforesaid, be attended with danger or annoyance to the public, or hindrance to the company in the lawful use of the railway, it shall be lawful for the company summarily to interfere to obviate or remove such danger, annoyance or hindrance, and that without prejudice to any penalty incurred by the infraction of any such bye-law (g).

Publication of such bye-laws.

CX. The substance of such last-mentioned bye-laws, when confirmed or allowed according to the provisions of any act in force regulating the allowance or confirmation of the same, shall be painted on boards, or printed on paper and pasted on boards, and hung up and affixed and continued on the front or other conspicuous part of every wharf or station belonging to the company, according to the nature or subject-matter of such bye-laws respectively, and so as to give public notice thereof to the parties interested therein or affected thereby; and such boards shall from time to time be renewed, as often as the bye-laws thereon, or any part thereof, shall be obliterated or destroyed; and no penalty imposed by any such bye-law shall be recoverable, unless the same shall have been published and kept published in manner aforesaid.

Such bye-laws to be binding on all parties.

CXI. Such bye-laws, when so confirmed, published and affixed, shall be binding upon, and be observed by, all parties, and shall be sufficient to justify all persons acting under the same; and, for proof of the publication of any such bye-laws, it shall be sufficient to prove that a printed paper or painted board, containing a copy of such bye-laws, was affixed and continued in manner by this act directed; and in case of its being afterwards displaced or damaged, then that such paper or board was replaced as soon as conveniently might be.

Leasing of Railway.

Exercise of power to lease the railway.

And with respect to Leasing the Railway, be it enacted as follows (h):—

CXII. Where the company shall be authorized by the special act to lease the railway, or any part thereof, to any company or person, the lease to be executed in pursuance of such authority shall contain all usual and proper covenants on the part of the lessee for

(g) See as to the jurisdiction of the Board of Trade over bye-laws, ante, text, 443; and what bye-laws are legal, ante, text, 486.

(h) See ante, text, 475.

maintaining the railway, or the portion thereof comprised in such lease, in good and efficient repair and working condition during the continuance thereof, and for so leaving the same at the expiration of the term thereby granted, and such other provisions, conditions, covenants and agreements as are usually inserted in leases of a like nature.

CXIII. Such lease shall entitle the company or person to whom the same shall be granted to the free use of the railway or portion of railway comprised therein, and, during the continuance of any such lease, all the powers and privileges granted to, and which might otherwise be exercised and enjoyed by the company, or the directors thereof, or their officers, agents or servants, by virtue of this or the special act, with regard to the possession, enjoyment and management of the railway, or of the part thereof comprised in such lease, and the tolls to be taken thereon, shall be exercised and enjoyed by the lessee, and the officers and servants of such lessee, under the same regulations and restrictions as are by this or the special act imposed on the company, and their directors, officers and servants; and such lessee shall, with respect to the railway comprised in such lease, be subject to all the obligations by this or the special act imposed on the company.

And with respect to the Engines and Carriages to be brought on the railway, be it enacted as follows (i):—

CXIV. Every locomotive steam-engine to be used on the railway shall, if it use coal or other similar fuel emitting smoke, be constructed on the principle of consuming, and so as to consume, its own smoke; and if any engine be not so constructed, the company or party using such engine shall forfeit five pounds for every day during which such engine shall be used on the railway.

CXV. No locomotive or other engine, or other description of moving power, shall at any time be brought upon or used on the railway, unless the same have first been approved of by the company; and within fourteen days after notice given to the company by any party desirous of bringing any such engine on the railway, the company shall cause their engineer or other agent to examine such engine at any place within three miles' distance from the railway, to be appointed by the owner thereof, and to report thereon to the company; and within seven days after such report, if such engine be proper to be used on the railway, the company shall give a certificate to the party requiring the same of their approval of such engine; and if at any time the engineer or other agent of the company report that any engine used upon the railway is out of repair, or unfit to be used upon the railway, the company may require the same to be taken off, or may forbid its use upon the railway until the same shall have been repaired to the satisfaction of the company, and, upon the engine being so repaired, the company shall give a certificate to the party requiring the same of their approval of such engine; and if any difference of opinion arise between the company and the owner of any such engine as to the fitness or unfitness thereof for the purpose of being used on the railway, such difference shall be settled by arbitration.

CXVI. If any person, whether the owner or other person having the care thereof, bring or use upon the railway any locomotive or other engine, or any moving power, without having first obtained such certificate of approval as aforesaid, or if, after notice given by the company to remove any such engine from the railway, such person do not forthwith remove the same, or if, after notice given by the company not to use any such engine on the railway, such person do so use such engine, without having first repaired the same to the satisfaction of the company, and obtained such certificate of approval, every such person shall, in any of the cases aforesaid, forfeit to the company a sum not exceeding twenty pounds; and in any such case it shall be lawful for the company to remove such engine from the railway.

CXVII. No carriage shall pass along, or be upon the railway (except in directly crossing the same, as herein or by the special act authorized), unless such carriage be at all times, so long as it shall be used or shall remain on the railway, of the construction and in the condition which the regulations of the company for the time being shall require; and if any dispute arise between the company and the owner of any such carriage as to the construction or condition thereof, in reference to the then existing regulations of the company, such dispute shall be settled by arbitration.

CXVIII. The regulations from time to time to be made by the company respecting the carriages to be used on the railway shall be drawn up in writing, and be authenticated by the common seal of the company, and shall be applicable alike to the carriages of the company and to the carriages of other companies or persons using the railway; and a copy of such regulations shall, on demand, be furnished by the secretary of the company to any person applying for the same.

CXIX. If any carriage, not being of such construction or in such condition as the regulations of the company for the time being require, be made to pass or be upon any part of the railway (except as aforesaid), the owner thereof, or any person having for the time being the charge of such carriage, shall forfeit to the company a sum not exceeding

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Powers vested in the company may be exercised by the lessees.

Carriages and Engines.

Engines to consume their smoke.

Engines to be approved by the company, and certificate of approval given.

Unfit engines to be removed.

Penalty for using improper engines.

Carriages to be constructed according to company's regulations.

Regulations to apply also to company's carriages.

Penalty for using improper carriages.

(i) See ante, text, 467.

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Owner's name, &c. to be registered, and exhibited on carriages.

On non-compliance, carriage may be removed.

Carriages improperly loaded, or suffered to obstruct the road, may be unloaded or removed.

Company not to be liable for damage by such unloading, &c.

Owners liable for damage by their servants.

Owners may recover from servants.

Arbitration.

Where questions are to be determined by arbitration, the arbitrators to be appointed within fourteen days after notice.

In case of failure to appoint by one party, the other may appoint.

ten pounds for every such offence, and it shall be lawful for the company to remove any such carriage from the railway.

CXX. The respective owners of carriages using the railway shall cause to be entered with the secretary or other officer of the company appointed for that purpose the names and places of abode of the owners of such carriages respectively, and the numbers, weights and gauges of their respective carriages; and such owners shall also, if so required by the company, cause the same particulars to be painted in legible characters on some conspicuous part of the outside of every such carriage, so as to be always open to view; and every such owner shall, whenever required by the company, permit his carriage to be weighed, measured or gauged, at the expense of the company.

CXXI. If the owner of any carriage fail to comply with the requisitions contained in the preceding enactment, it shall be lawful for the company to refuse to allow such carriage to be brought upon the railway, or to remove the same therefrom until such compliance.

CXXII. If the loading of any carriage using the railway be such as to be liable to collision with other carriages properly loaded, or to be otherwise dangerous, or if the person having the care of any carriage or goods upon the railway suffer the same or any part thereof to remain on the railway so as to obstruct the passage or working thereof, it shall be lawful for the company to cause such carriage or goods to be unloaded and removed in any manner proper for preventing such collision or obstruction, and to detain such carriage or goods, or any part thereof, until the expenses occasioned by such unloading, removal or detention be paid.

CXXIII. The company shall not be liable for any damage or loss occasioned by any such unloading, removal or detention as aforesaid, except for damage wilfully or negligently done to any carriage or goods so unloaded, removed or detained; nor shall they be liable for the safe custody of any such carriage or goods so detained, unless the same be wrongfully detained by them, and then only for so long a time as the same shall have been so wrongfully detained.

CXXIV. The respective owners of engines and carriages passing or being upon the railway shall be answerable for any trespass or damage done by their engines or carriages, or by any of the servants or persons employed by them, to or upon the railway, or the machinery or works belonging thereto, or to or upon the property of any other person; and every such servant or other person may lawfully be convicted of such trespass or damage before any two justices of the peace, either by the confession of the party offending, or upon the oath of some credible witness; and upon such conviction every such owner shall pay to the company, or to the person injured, as the case may be, the damage to be ascertained by such justices, so that the same do not exceed fifty pounds.

CXXV. It shall be lawful for any owner of any engine or carriage who shall pay the amount of any damage caused by the misfeasance or negligence of any servant or other person employed by him to recover the amount so paid by him from such servant or other person by the same means as the company are enabled to recover the amount of such damage from the owner of any engine or carriage.

And with respect to the settlement of disputes by Arbitration, be it enacted as follows (1):—

CXXVI. When any dispute authorized or directed by this or the special act, or any act incorporated therewith, to be settled by arbitration shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the company under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation, and such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

(1) See the cases relating to arbitrations, ante, text, 283; also the notes (c) to (g), ante, App. 49—51.

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CXXVII. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable to act, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or incapacity as aforesaid.

Vacancy of arbitrator to be supplied.

CXXVIII. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under this or the special act; and, if such umpire shall die or become incapable to act, they shall forthwith, after such death or incapacity, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of umpire.

CXXIX. If, in either of the cases aforesaid, the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special act, shall be final.

Board of Trade empowered to appoint an umpire, on neglect of the arbitrators.

CXXX. If, where a single arbitrator shall have been appointed, such arbitrator shall die, or become incapable to act, before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special act, in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator, the matter to begin de novo.

CXXXI. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If either arbitrator refuse to act, the other to proceed *ex parte*.

CXXXII. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators, under their hands, the matter referred to them shall be determined by the umpire to be appointed as aforesaid.

If arbitrators fail to make their award within twenty-one days, the matter to go to the umpire.

CXXXIII. The said arbitrators, or their umpire, may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties, or their witnesses, on oath, and administer the oaths necessary for that purpose.

Power for arbitrators to call for books, &c.

CXXXIV. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall, in the presence of a justice, make and subscribe the following declaration; (that is to say,)

Arbitrator and umpire to make declaration.

"I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act" [*naming the special act*].

A. B.

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

CXXXV. Except where, by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration to be determined by the arbitrators, shall be in the discretion of the arbitrators.

Costs to be in the discretion of the arbitrators.

CXXXVI. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

Submission to arbitration may be made a rule of court.

CXXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special act shall be set aside for irregularity or error in matter of form.

The award not to be set aside for matter of form.

CXXXVIII. And be it enacted, That any summons or notice, or any writ or other proceeding at law, or in equity, requiring to be served upon the company, may be served by the same being left at, or transmitted through the post directed to, the principal office of the company, or one of their principal offices, where there shall be more than one, or being given personally to the secretary (*m*), or, in case there be no secretary, then by being given to any one director of the company.

Service of notices upon company.

(*m*) See ante, text, 100, note (*q*); also the Common Law Procedure Act, 1852, 15 & 16 Vict. c. 76, s. 16. As to services of declarations in ejectment, see *Doe d. Fisher*

v. Rce, 10 M. & W. 21; *Doe d. Bayes v. Roe*, 16 M. & W. 98; *Doe d. Burgess v. Roe*, 4 D. & L. 311.

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Tender of
amends.

CXXXIX. And be it enacted, That if any party shall have committed any irregularity, trespass or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given; and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and, if no such tender shall have been made, it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Recovery of Da-
mages and Penal-
ties.

Provision for
damages not
otherwise pro-
vided for.

And with respect to the recovery of damages not specially provided for, and of penalties (n), and to the determination of any other matter referred to justices, be it enacted as follows (o):—

CXL. In all cases where any damages, costs or expenses are by this or the special act, or any act incorporated therewith, directed to be paid, and the method of ascertaining the amount, or enforcing the payment thereof, is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid, by the company or other party liable to pay the same, within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice, on application, shall issue their or his warrant accordingly.

Distress against
the treasurer.

CXLI. If sufficient goods of the company cannot be found whereon to levy any such damages, costs and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all cost and expenses occasioned thereby, out of any money belonging to the company coming into his custody, or he may sue the company for the same.

Method of pro-
ceeding before
justices in ques-
tions of damages,
&c.

CXLII. Where, in this or the special act, any question of compensation, expenses, charges or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties, or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Publication of
penalties.

CXLIII. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special act, or by any bye-law of the company affecting other persons than the shareholders, officers or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper, and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and, where any such penalties are of local application, shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same, or any part thereof, is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defac-
ing boards used
for such publica-
tion.

CXLIV. If any person pull down or injure any board put up or affixed as required by this or the special act for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be
summarily reco-
vered before two
justices.

CXLV. Every penalty or forfeiture imposed by this or the special act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and, on complaint being made to any justice, he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons, and every such summons shall be served on the party offending, either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party

(n) And see 8 & 9 Vict. c. 16, s. 142;
c. 18, s. 136.

(o) See ante, 70, note (h), and ante, text,
281.

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complained against, or, in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and, upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and, upon such conviction, to adjudge the offender to pay the penalty or forfeiture incurred, as well as such cost attending the conviction as such justices shall think fit.

CXLVI. If forthwith, upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices, or either of them, shall issue their or his warrant of distress accordingly.

Penalties to be levied by distress.

CXLVII. It shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture and costs, unless the offender give sufficient security, by way of recognizance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if, before issuing such warrant of distress, it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty or forfeiture and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice shall, by warrant, cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture and costs be sooner paid and satisfied.

Imprisonment in default of distress.

CXLVIII. Where, in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress, how to be levied.

CXLIX. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Distress not unlawful for want of form.

CL. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish; or, if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or, if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district.

Application of penalties.

CLI. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Penalties to be sued for within six months.

CLII. If, through any act, neglect or default on account whereof any person shall have incurred any penalty imposed by this or the special act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Damage to be made good in addition to penalty.

CLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Penalty on witnesses making default.

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Transient
offenders (o).

Form of conviction.

Proceedings not
to be quashed for
want of form, &c.

Parties allowed to
appeal to quarter
sessions on giving
security.

Court to make
such order as
they think rea-
sonable.

Receiver of me-
tropolitan police
district to receive
penalties incurred
within his dis-
trict.

2 & 3 Vict. c. 71.

Persons giving
false evidence
liable to penalties
of perjury.

Money paid into
the Bank of Ire-
land to be exempt
from ushers'
poundage.

1 & 2 Vict. c. 117.

Access to special
Act.

CLIV. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special act, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

CLV. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule to this act annexed.

CLVI. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

CLVII. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith, after such notice, enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

CLVIII. At the quarter sessions for which such notice shall be given, the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

CLIX. Provided always, and be it enacted, That, notwithstanding anything herein or in the special act, or any act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the Metropolitan Police District, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid and applied by an act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis;" and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction and appeal had been made in pursuance of the provisions of the said last-mentioned act.

CLX. And be it enacted, That every person who, upon any examination upon oath, under the provisions of this or the special act, or any act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

CLXI. And be it declared and enacted, That all sums of money which have been or shall be paid into the Bank of Ireland in the name and with the privity of the Accountant-General of the Court of Chancery of Ireland, under the provisions of an act passed in the second year of the reign of her present Majesty, intituled "An Act to provide for the Custody of certain Monies paid in pursuance of the Standing Orders of either House of Parliament by Subscribers to Works or Undertakings to be effected under the Authority of Parliament" (p), shall and may be paid out and applied under any order of the said Court of Chancery exempt from ushers' poundage.

And with respect to the provisions to be made for affording access to the special act by all parties interested, be it enacted as follows:—

CLXII. The company shall, at all times after the expiration of six months after the

(o) And see 8 & 9 Vict. c. 16, s. 156,
ante, 43.

(p) See 9 & 10 Vict. c. 20, post, 104.

passing of the special act, keep in their principal office of business a copy of the special act printed by the printers to her Majesty, or some of them; and shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special act so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

CLXIII. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

CLXIV. That this act shall not extend to Scotland (q).

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Copies of special act to be kept and deposited, and allowed to be inspected.

7 W. 4 & 1 Vict. c. 83, ante, p. 1.

Penalty on company failing to keep or deposit such copies.

Act not to extend to Scotland.

SCHEDULE REFERRED TO BY THE FOREGOING ACT.

to wit.

Be it remembered, that on the day of , in the year of our Lord A. B. is convicted before us, C., D., two of her Majesty's justices of the peace for the county of [here describe the offence generally, and the time and place when and where committed], contrary to the [here name the special act]. Given under our hands and seals the day and year first above written.

C.
D.

8 & 9 VICT. CAP. 28.

An Act to empower Canal Companies and the Commissioners of Navigable Rivers to vary their Tolls, Rates and Charges on different Parts of their Navigations (r). [30th June, 1845.

8 & 9 VICT. CAP. 42.

An Act to enable Canal Companies to become Carriers of Goods upon their Canals (s). [21st July, 1845.

8 & 9 VICT. CAP. 46.

An Act for the Appointment of additional Constables for keeping the Peace near Public Works in Ireland (t). [21st July, 1845.

Whereas it is expedient to provide for the appointment and payment of additional head and other constables for keeping the peace, and for the protection of the inhabitants and the security of property, in the neighbourhood of railway works and other public works in Ireland: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act, in any case in which the works of any railway, canal or other public work of a similar nature shall be in progress of construction in Ireland, upon the application of the company or other parties carrying on any such public work, or upon the application of two or more justices of the peace of the county acting in the petty sessions of the district in or through which any such public work may be in the course of construction, to whom it shall be made appear, on the oath of two or more credible witnesses, that the appointment of additional constables for the keeping of the peace, and for the protection of the inhabitants, and the security of property, in the neighbourhood of such works, is necessary in consequence of the behaviour or reasonable apprehension of the behaviour of the persons employed in the said works, it shall be lawful for the lord

Additional head and other constables may be appointed by the lord lieutenant to keep the peace near the works of railways, &c. in Ireland.

(q) The Scotch Act is 8 & 9 Vict. c. 21.

(r) See note (s).

(s) This act is amended by 10 & 11 Vict. c. 94. These statutes were passed to enable canal companies to compete with railways. It is not deemed necessary to in-

clude them in this collection. See *Rogers v. Oxford, W. and W. R. Co.*, 2 De G. & J. 662, on sect. 8. See also 21 & 22 Vict. c. 75, post, and 23 & 24 Vict. c. 41.

(t) And see 11 & 12 Vict. c. 72, post, p. 112.

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6 & 7 Will. 4,
c. 13.

Expenditure of additional head and other constables to be paid by the company or parties carrying on such works.

If the company or parties neglect to pay the expense, it may be recovered at the suit of her Majesty's Attorney General for Ireland, or by distress and sale of the goods of the company.

Alteration of Act.

lieutenant or other chief governor or governors of Ireland, if he or they shall so think fit, from time to time to order and direct that, in addition to the number of head and other constables whom the said lord lieutenant or other chief governor or governors of Ireland is or are authorized to appoint by virtue of an act passed in the sixth year of the reign of his late Majesty, intituled "An Act to consolidate the Laws relating to the Constabulary Force in Ireland," and the other acts amending the same, such number of head and other constables as he or they shall think fit, not exceeding in any case the number specified in any such application as aforesaid, shall be appointed and employed during the construction of such public works, in aid of and in conjunction with the said constabulary force in such county, county of a city, county of a town, or place, near to the said public works so in progress of construction, as shall be mentioned in the said order, and shall remain there for such length of time, or remove to or remain at such other place or places near to such public works for such time or times, as shall be mentioned or directed by such order, or any other order or orders which may from time to time be made by such lord lieutenant or other chief governor or governors or by the inspector general of the said constabulary force, under the control and directions of the said lord lieutenant or other chief governor or governors; and such constables may in like manner, by any such order, be reduced in number, or wholly removed from the neighbourhood of such works; and the head and other constables so appointed shall, during the period of such employment, have the same amount of pay and allowances, and the same rights, powers and authorities, privileges and advantages, and be subject to the same provisions and enactments, rules, regulations and orders, and be in all respects in the same situation in the county, county of a city, or county of a town in which they shall be stationed, as far as the circumstances of the case will admit, as if they had been appointed to and formed part of the constabulary force established in and for such county, county of a city, or county of a town.

II. And be it enacted, That the inspector general of the said constabulary force, with the assistance of the receiver of the said force, shall from time to time, or as often as he shall think convenient, prepare and certify under his hand a detailed account of the expense incurred for the pay, salary, clothing and equipment, lodging and other allowances of such men so appointed and employed as aforesaid, which expense, when approved and certified by the chief or under secretary of such lord lieutenant or other chief governor or governors, the said company or parties, or their agent, shall, upon demand, pay to the said receiver, to be placed to the credit of the county, county of a city, or county of a town in which such constables as aforesaid shall have been so employed.

III. And be it enacted, That in all cases where the company or other parties carrying on such public work shall refuse or neglect, during fourteen days next after demand thereof, to pay any such expense, or any part thereof, as shall have been so certified and approved as aforesaid, the same shall and may be sued for in any of the superior courts, at the suit of her Majesty's attorney-general for Ireland, as a debt due to her Majesty, or, upon production of such account, so certified and approved, before any two justices of the county, county of a city, or county of a town in which such constables shall have been so employed as aforesaid; and upon proof on oath of such demand made as aforesaid of such company or parties, or any officer superintending such public works, and upon the application of the said receiver of the constabulary force, or any person by him authorized in writing, it shall be lawful for such justices, by their warrant under their hands and seals (which they are hereby authorized and required to grant), to cause the amount of such account to be levied, together with the expenses of levying the same, by distress and sale of the goods and chattels of the company or other parties carrying on such public works as aforesaid; and the surplus, if any, arising from such distress and sale, after deducting the amount of such account, together with the reasonable expenses attendant on such distress and sale, shall be rendered to the said company or parties.

IV. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of Parliament.

8 & 9 VICT. CAP. 96.

An Act to restrict the Powers of selling or leasing Railways contained in certain Acts of Parliament relating to such Railways. [4th August, 1845.]

No railway company to grant or accept a lease or transfer of any railway, unless under a distinct

Whereas provisions have been introduced in various acts of Parliament, during the present session of Parliament, relating to railways, giving to railway companies general powers of granting or accepting a lease, sale, or transfer of their own or other lines of railway; and it is expedient that such powers should be restrained: be it therefore enacted, That it shall not be lawful for the company of proprietors of any railway, by virtue of any powers contained in any act passed in the present session, to make or grant, or for any other railway company or party, by virtue of any such powers, to accept a sale, lease, or other transfer of any railway, unless under the authority of a distinct provision in some

act of Parliament to that effect specifying by name the railway to be so leased, sold, or transferred, and the company or party by whom such lease, sale, or transfer may be respectively made, granted, or accepted.

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provision of an
act specifying the
parties.

8 & 9 VICT. CAP. 113.

An Act to facilitate the Admission in Evidence of certain Official and other Documents.
[8th August, 1845.]

Whereas it is provided by many statutes, that various certificates, official and public documents, documents and proceedings of corporations and of joint-stock and other companies, and certified copies of documents, bye-laws, entries in registers and other books, shall be receivable in evidence of certain particulars in courts of justice, provided they be respectively authenticated in the manner prescribed by such statutes; And whereas the beneficial effect of these provisions has been found by experience to be greatly diminished by the difficulty of proving that the said documents are genuine; and it is expedient to facilitate the admission in evidence of such and the like documents: be it therefore enacted, That whenever, by any act now in force, or hereafter to be in force, any certificate, official or public document, or document or proceeding of any corporation or joint-stock or other company, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any court of justice, or before any legal tribunal, or either House of Parliament, or any committee of either House, or in any judicial proceeding, the same shall respectively be admitted in evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed by the respective acts made, or to be hereafter made, without any proof of the seal or stamp, where a seal or stamp is necessary, or of the signature or of the official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original record could have been received in evidence.

Certain documents to be received in evidence without proof of seal or signature, &c. of person signing the same.

II. That all courts, judges, justices, masters in Chancery, masters of courts, commissioners judicially acting, and other judicial officers, shall henceforth take judicial notice of the signature of any of the equity or common law judges of the superior courts at Westminster, provided such signature be attached or appended to any decree, order, certificate or other judicial or official document.

Courts, &c. to take judicial notice of signature of equity or common-law judges, &c.

III. That all copies of private and local and personal acts of Parliament not public acts, if purporting to be printed by the Queen's printers, and all copies of the journals of either House of Parliament, and of royal proclamations, purporting to be printed by the printers to the Crown, or by the printers to either House of Parliament, or by any or either of them, shall be admitted as evidence thereof by all courts, judges, justices and others, without any proof being given that such copies were so printed.

Copies of private acts printed by Queen's printer, journals of Parliament, and proclamations, admissible as evidence.

IV. That if any person shall forge the seal, stamp or signature of any such certificate, official or public document, or document or proceeding of any corporation or joint-stock or other company, or of any certified copy of any document, bye-law, entry in any register or other book, or other proceeding as aforesaid (t), or shall tender in evidence any such certificate, official or public document, or document or proceeding of any corporation or joint-stock or other company, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, with a false or counterfeit seal, stamp or signature thereto, knowing the same to be false or counterfeit, whether such seal, stamp or signature be those of or relating to any corporation or company already established, or to any corporation or company to be hereafter established, or if any person shall forge the signature of any such judge as aforesaid to any order, decree, certificate or other judicial or official document, or shall tender in evidence any order, decree, certificate or other judicial or official document with a false or counterfeit signature of any such judge as aforesaid thereto, knowing the same to be false or counterfeit, or if any person shall print any copy of any private act or of the journals of either House of Parliament, which copy shall falsely purport to have been printed by the printers to the Crown, or by the printers to either House of Parliament, or by any or either of them, or if any person shall tender in evidence any such copy, knowing that the same was not printed by the person or persons by whom it so purports to have been printed, every such person shall be guilty of felony, and shall upon conviction be liable to transportation for seven years, or to imprisonment for any term not more than three nor less than one year, with hard labour: provided also, that whenever any such document as before mentioned shall have been received in evidence by virtue of this act, the court, judge, commissioner or other person officiating judicially who shall have admitted the same, shall, on the request of any party against whom the same is so received, be authorized, at its or at his own discretion,

Persons forging seal, stamp, or signature of certain documents, or printing any private act with false purport, guilty of felony.

(t) See also 24 & 25 Vict. c. 98, s. 29.

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to direct that the same shall be impounded, and be kept in the custody of some officer of the court or other proper person, until further order touching the same shall be given, either by such court or the court to which such master or other officer belonged, or by the persons or person who constituted such court, or by some one of the equity or common law judges of the superior courts at Westminster, on application being made for that purpose.

Not to extend to Scotland.

V. That this act shall not extend to Scotland.

9 & 10 VICT. CAP. 20.

An Act to amend an Act of the second Year of her present Majesty, for providing for the Custody of certain Monies paid in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the authority of Parliament. [18th June, 1846.]

1 & 2 Vict. c. 117. Whereas an act was passed in the second year of the reign of her present Majesty Queen Victoria, intituled "An Act to provide for the Custody of certain Monies paid in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the authority of Parliament:" And whereas it is expedient that the said act should be repealed, and should be re-enacted with such modifications, extensions and alterations as after mentioned: be it therefore enacted, That the said act shall be and is hereby repealed: provided always, that all acts done under the provisions of the said act shall be good, valid and effectual to all intents and purposes, and that all sums of money paid under the provisions of the said act shall be dealt with in all respects as if this act had not been passed.

Recited act repealed.

Acts done and monies paid under former act.

Authority to deposit.

II. That in all cases in which any sum of money is required by any standing order of either House of Parliament, either now in force or hereafter to be in force, to be deposited by the subscribers to any work or undertaking which is to be executed under the authority of an act of Parliament, if the director or person or directors or persons having the management of the affairs of such work or undertaking, not exceeding five in number, shall apply to one of the clerks in the office of the clerk of the Parliaments with respect to any such money required by any standing order of the lords spiritual and temporal in Parliament assembled, or to one of the clerks of the private bill office of the House of Commons with respect to any such money required by any standing order of the Commons in Parliament assembled to be deposited, it shall be lawful for the clerk so applied to, by warrant or order under his hand, to direct that such sum of money shall be paid in manner hereinafter mentioned; (that is to say,) into the Bank of England, in the name and with the privity of the accountant-general of the Court of Chancery in England, if the work or undertaking in respect of which the sum of money is required to be deposited is intended to be executed in that part of the United Kingdom called England, or into any of the banks of Scotland established by act of Parliament or royal charter, in the name and with the privity of the Queen's Remembrancer of the Court of Exchequer in Scotland, at the option of the person or persons making such application as aforesaid, in case such work or undertaking is intended to be executed in that part of the United Kingdom called Scotland, or into the Bank of Ireland, in the name and with the privity of the accountant-general of the Court of Chancery in Ireland, in case such work or undertaking is intended to be made or executed in that part of the United Kingdom called Ireland; and such warrant or order shall be a sufficient authority for the accountant-general of the Court of Chancery in England, the Queen's Remembrancer of the Court of Exchequer in Scotland, and the accountant-general of the Court of Chancery in Ireland, respectively, to permit the sum of money directed to be paid by such warrant or order to be placed to an account opened or to be opened in his name in the bank mentioned in such warrant or order.

Payment of deposit.

III. That it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, to pay the sum mentioned in such warrant or order into the bank mentioned in such warrant or order in the name and with the privity of the officer or person in whose name such sum shall be directed to be paid by such warrant or order, to be placed to his account there *ex parte* the work or undertaking mentioned in such warrant or order, pursuant to the method prescribed by any act or acts for the time being in force for regulating monies paid into the said courts, and pursuant to the general orders of the said courts respectively, and without fee or reward; and every such sum so paid in, or the securities in or upon which the same may be invested as hereinafter mentioned, or the stocks, funds, or securities authorized to be transferred or deposited, in lieu thereof as hereinafter mentioned, shall there remain until the same, with all interest and dividends, if any, accrued thereon, shall be paid out of such bank, in pursuance of the provisions of this act: Provided always, that in case any such director or person, directors or persons, having the management of any such proposed work or undertaking as aforesaid, shall have previously invested in the Three per Centum Consolidated or the Three per Centum Reduced Bank Annuities, Exchequer Bills or other Government securities,

the sum or sums of money required by any such standing order of either House of Parliament as aforesaid to be deposited by the subscribers to any work or undertaking which is to be executed under the authority of an act of Parliament, it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, to deposit such Exchequer bills or other Government securities in the bank mentioned in such warrant or order in the name and with the privity of the officer or person in whose name such sum shall by such warrant or order be directed to be paid, or to transfer such Government stocks or funds into the name of the officer or person; and such transfer or deposit shall be directed by such clerk of the office of the clerk of the Parliaments, or such clerk of the private bill office of the House of Commons, as the case may be, in lieu of payment of so much of the sum of money required to be deposited as aforesaid as the same Exchequer bills or other the Government stocks or funds will extend to satisfy at the price at which the same were originally purchased by the said person or persons, director or directors as aforesaid, such price to be proved by production of the broker's certificate of such original purchase.

IV. That if the person or persons named in such warrant or order, or the survivors or survivor of them, desire to have invested any sum so paid into the Bank of England or the Bank of Ireland, or any interest or dividend which may have accrued on any stocks or securities so transferred or deposited as aforesaid, the court in the name of whose accountant-general the same may have been paid may, on a petition presented to such court in a summary way by him or them, order that such sum or such interest or dividends shall, until the same be paid out to the parties entitled to the same in pursuance of this act, be laid out in the Three per Centum Consolidated or Three per Centum Reduced Bank Annuities, or any Government security or securities, at the option of the aforesaid person or persons, or the survivors or survivor of them (*u*).

V. That on the termination of the session of Parliament in which the petition or bill for the purpose of making or sanctioning any such work or undertaking shall have been introduced in Parliament, or if such petition or bill shall be rejected or finally withdrawn by some proceeding in either House of Parliament, or shall not be allowed to proceed, or if the person or persons by whom the said money was paid or security deposited shall have failed to present a petition, or if an act be passed authorizing the making of such work or undertaking (*x*), and if in any of the foregoing cases the person or persons named in such warrant or order, or the survivors or survivor of them, or the majority of such persons, apply by petition to the court in the name of whose Accountant-General the sum of money mentioned in such warrant or order shall have been paid, or such Exchequer bills, stocks, or funds shall have been deposited or transferred as aforesaid, or to the Court of Exchequer in Scotland, in case such sum of money shall have been paid in the name of the said Queen's Remembrancer, the court in the name of whose Accountant-General or Queen's Remembrancer such sum of money shall have been paid, or such Exchequer bills, stocks or funds shall have been deposited or transferred, shall by order direct the sum of money paid in pursuance of such warrant or order, or the stocks, funds or securities in or upon which the same may have been invested, and the interest or dividends thereof, or the Exchequer bills, stocks or funds so deposited or transferred as aforesaid, and the interest and dividends thereof, to be paid or transferred to the party or parties so applying, or to any other person or persons whom they may appoint in that behalf; but no such order shall be made in the case of any such petition or bill being rejected or not being allowed to proceed, or being withdrawn, or not being presented, or of an act being passed authorizing the making of such work or undertaking, unless upon the production of the certificate of the chairman of committees of the House of Lords with reference to any proceeding in the House of Lords, or of the speaker of the House of Commons with reference to any proceeding in the House of Commons, that the said petition or bill was rejected or not allowed to proceed, or was withdrawn during its passage through one of the Houses of Parliament, or was not presented, or that such act was passed, which certificate the said chairman or speaker shall grant on the application in writing of the person or persons or the majority of the persons named in such warrant, or the survivor or survivors of them: Provided always, that the granting of any such certificate, or any mistake or error therein or in relation thereto, shall not make the chairman or speaker signing the same liable in respect of any monies, stocks, funds and securities which may be paid, deposited, invested, or transferred in pursuance of the provisions of this act, or the interest or dividends thereof.

Investment of deposit.

Repayment of deposit.

Granting certificate, &c., not to make the chairman or speaker signing the same liable.

(*u*) *Re Manchester R. Co.*, 4 Railw. C. (x) See ante, text, 41, note (*i*).

APPENDIX.

9 & 10 VICT. CAP. 57.

An Act for regulating the Gauge of Railways (y). [18th August, 1846.]

On what gauge railways shall be made.

Whereas it is expedient to define the gauge on which railways shall be constructed; be it enacted, That, after the passing of this act, it shall not be lawful (except as herein-after excepted) to construct any railway for the conveyance of passengers on any gauge other than four feet eight inches and half an inch in Great Britain, and five feet three inches in Ireland: Provided always, that nothing hereinbefore contained shall be deemed to forbid the maintenance and repair of any railway constructed before the passing of this act on any gauge other than those hereinbefore specified, or to forbid the laying of new rails on the same gauge on which such railway is constructed within the limits of deviation authorized by the several acts under the authority of which such railways are severally constructed.

Exception of certain railways.

II. That nothing hereinbefore contained shall apply to any railway constructed or to be constructed under the provisions of any present or future act containing any special enactment defining the gauge or gauges of such railway, or any part thereof, or to any railway which is in its whole length southward of the Great Western Railway, or to any railway in any of the counties of Cornwall, Devon, Dorset or Somerset, for which any act has been or shall be passed in this session of Parliament, or to any railway in any of the last-mentioned counties now in course of construction, or to the two railways severally to be constructed under the authority of two acts passed in this session of Parliament, severally intituled "An Act for making a Railway from the Great Western Railway at West Drayton to Uxbridge in Middlesex," and "An Act for making a Railway from the Great Western Railway at Maidenhead in Berkshire to the Town of High Wycombe in the County of Buckingham;" or to so much of an act passed in this session, intituled "An Act to authorize certain Extensions of the Line of the Oxford, Worcester and Wolverhampton Railway and to amend the Act relating thereto," as authorizes the construction of a branch railway from the Oxford, Worcester and Wolverhampton Railway to the town of Witney in the County of Oxford; or to an act passed or which may be passed in this session of Parliament "to authorize the Construction of a Railway from Melin-y-Manach to Rhydydefydd in the County of Glamorgan."

9 & 10 Vict.
c. lxvi.
9 & 10 Vict.
c. ccxxxvi.

9 & 10 Vict.
c. cclxxviii.

Certain railways to be on the broad gauge.

8 & 9 Vict. c. exc.
8 & 9 Vict. c. xcvi.
9 & 10 Vict.

9 & 10 Vict. c. cv.

Gauge not to be altered.

Provision as to the Oxford and Rugby, and Oxford, Worcester, and Wolverhampton Railways.

8 & 9 Vict.
c. clxxxviii.
8 & 9 Vict.
c. clxxxiv.

Penalty on company for constructing railways contrary to this act.

Railways constructed contrary to this act may be abated.

III. That the several railways authorized to be constructed by an act passed in the last session of Parliament, intituled "An Act for making a Railway to be called The South Wales Railway," and by an act also passed in the last session of Parliament, intituled "An Act for making a Railway from Monmouth to Hereford, with Branches therefrom to Westbury, and to join the Forest of Dean Railway," and by two acts passed in this session of Parliament, severally intituled "An Act for completing the Line of the South Wales Railway, and to authorize the Construction of an Extension and certain Alterations of the said Railway, and certain Branch Railways in connexion therewith," and "An Act for making a Railway Communication between the City of Bristol and the proposed South Wales Railway in the County of Monmouth, with a Branch Railway therefrom," shall be constructed on the gauge of seven feet.

IV. That it shall not be lawful, after the passing of this act, to alter the gauge of any railway used for the conveyance of passengers (y).

V. That nothing hereinbefore contained shall be deemed to affect the provisions of two acts passed in the last session of Parliament, respectively intituled "An Act for making a Railway from the City of Oxford to the Town of Rugby," and "An Act for making a Railway from Oxford to Worcester and Wolverhampton," with respect to the gauge on which they are to be formed, or the additional rails which, according to the several provisions of the last two recited acts, are to be or may be laid down and maintained on the railways thereby authorized, or with respect to the powers thereby conferred on the commissioners of her Majesty's Privy Council for Trade and Foreign Plantations concerning the construction and use of the railways thereby authorized.

VI. That if any railway used for the conveyance of passengers shall be constructed or altered contrary to the provisions of this act, the company authorized to construct the railway, or, in the case of any demise or lease of such railway, the company for the time being having the control of the works of such railway, shall forfeit ten pounds for every mile of such railway which shall be so unlawfully constructed or altered, during every day that the same shall continue so unlawfully constructed or altered; and in estimating the amount of any such penalty any distance less than one mile shall be estimated as a mile (y).

VII. That over and above the penalty hereinbefore provided, if any railway used for the conveyance of passengers shall be constructed or altered contrary to the provisions of this act, it shall be lawful for the Commissioners of her Majesty's Woods, Forests, Land Revenues, Works and Buildings, or for the Lords of the Committee of her Majesty's Privy

(y) Sections 4, 6, 7, 8 of this act were made applicable to railway companies incorporated by certificate of the Board of

Trade under "The Railways Construction Facilities Act, 1864," by that act. 27 & 28 Vict. c. 121, post.

Council for Trade and Foreign Plantations, to abate and remove the same or any part thereof so constructed or altered contrary to the provisions of this act, and to restore the site thereof to its former condition (z).

VIII. That all penalties under this act may be recovered from the company liable to pay and make good the same, as, under the provisions of an act passed in the last session of Parliament, intituled "An Act for consolidating in one Act certain Provisions usually inserted in Acts authorizing the making of Railways," a penalty for any infringement of the last-recited acts is recoverable against a company authorized to construct a railway (z).

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Recovery of penalties.
8 & 9 Vict. c. 20, s. 140, ante, 98.

9 & 10 VICT. CAP. 62.

An Act to abolish Deodands, [18th August, 1846.]

Whereas the law respecting the forfeiture of chattels which have moved to or caused the death of man, and respecting deodands, is unreasonable and inconvenient: Be it enacted, That, from and after the first day of September, one thousand eight hundred and forty-six, there shall be no forfeiture of any chattel for or in respect of the same having moved to or caused the death of man; and no coroner's jury sworn to inquire, upon the sight of any dead body, how the deceased came by his death, shall find any forfeiture of any chattel which may have moved or caused the death of the deceased, or any deodand whatsoever; and it shall not be necessary in any indictment or inquisition for homicide to allege the value of the instrument which caused the death of the deceased, or to allege that the same was of no value.

Deodands and forfeiture of chattels moving to or causing death abolished from and after 1 Sept. 1846.

9 & 10 VICT. CAP. 93.

An Act for compensating the Families of Persons killed by Accidents (a).

[26th August, 1846.]

Whereas no action at law is now maintainable against a person who by his wrongful act, neglect or default may have caused the death of another person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him: Be it therefore enacted, That whensoever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

An action to be maintainable against any person causing death through neglect, &c., notwithstanding the death of the person injured.

II. That every such action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

Action to be for the benefit of certain relations, and shall be brought by and in the name of executor or administrator of the deceased.

III. That not more than one action shall lie for and in respect of the same subject-matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

Only one action shall lie, and to be commenced within twelve months.

IV. That in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

Plaintiff to deliver a full particular of the person for whom such damages shall be claimed. Construction of act.

V. That the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, words denoting the singular number are to be understood to apply also to plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter.

VI. That this act shall come into operation from and immediately after the passing thereof, and that nothing herein contained shall apply to that part of the United Kingdom called Scotland.

Act to take effect after passing, and not to apply to Scotland.

(z) Ante, p. 106, note (y).

text, Part II. Ch. I. sect. 5; and see also

(a) See the decisions on this act, ante, 27 & 28 Vict. c. 95, post.

APPENDIX.

10 & 11 VICT. CAP. 42.

An Act to transfer the Collection and Management of the Duties in respect of Stage Carriages, Hackney Carriages, and Railway Passengers, from the Commissioners of Stamps and Taxes to the Commissioners of Excise.

[25th June, 1847.]

Duties in respect of stage and hackney carriages and licences for the same respectively, and in respect of railway passengers, transferred to the commissioners of excise.

Powers and provisions of the said acts to be executed by commissioners and officers of excise.

Bonds and securities given by railway companies to account for duties to be applicable to the duties when transferred to the commissioners of excise.

Whereas the collection and management of the several and respective duties hereinafter specified and described are now by law vested in the commissioners of stamps and taxes, and it is expedient to transfer the same to the commissioners of excise: Be it therefore enacted, That from and after the fifth day of September, one thousand eight hundred and forty-seven, the several and respective duties hereinafter specified and described; (that is to say), the duties granted and now payable in Great Britain by and under an act passed in the fifth and sixth years of the reign of her present Majesty (*b*), for and in respect of stage carriages, and licences for keeping, using or employing stage carriages, and for and in respect of passengers conveyed upon railways, and also the duties granted and now payable by and under an act passed in the first and second years of the reign of his late Majesty King William the Fourth, for and upon and in respect of licences to keep, use, employ, and let to hire hackney carriages within the distance of five miles from the General Post Office in the city of London, shall be and the same are hereby transferred to and placed under the care and management of the commissioners of excise for the time being; and the said several and respective duties shall thenceforth be denominated and deemed to be duties of excise, and shall be raised, levied, collected and accounted for by and under the authority of the commissioners of excise and their officers, anything in any former act or acts contained to the contrary notwithstanding.

II. That from and after the said fifth day of September all the powers, provisions, regulations and directions now in force contained in the said several acts hereinbefore mentioned or referred to, or in any other act or acts, and which at the time of the passing of this act may lawfully be executed and enforced by the commissioners of stamps and taxes or their officers, in relation to the said respective duties hereby transferred as aforesaid, or any of them, or in relation to stage carriages or hackney carriages, or the drivers or conductors of any such carriages, shall be executed and enforced by the commissioners of excise and their officers respectively, as fully and effectually to all intents and purposes as if such powers, provisions, regulations and directions had been repeated and re-enacted in this act, and expressly given to the said commissioners of excise and their officers respectively; and that all the powers, provisions, regulations and directions, forfeitures, pains and penalties contained in or imposed by any act or acts now in force relating to the said respective duties hereby transferred as aforesaid, as well as the powers, provisions, regulations and directions, forfeitures, pains and penalties contained in or imposed by any act or acts in force in relation to any of the duties of excise, so far as such last-mentioned powers, provisions, regulations and directions, forfeitures pains and penalties shall be applicable to the said respective duties hereby transferred as aforesaid, and so far as the same shall not be inconsistent with the special powers, provisions, regulations and directions, forfeitures, pains and penalties now in force in relation to the said respective duties hereby transferred as aforesaid, shall be of full force and effect, and shall be applied, enforced and put in execution for raising, collecting, levying, recovering and securing the last-mentioned duties, and for preventing, detecting and punishing all frauds, forgeries and other offences relating thereto, as fully and effectually to all intents and purposes as if such powers, provisions, regulations and directions, forfeitures, pains and penalties were repeated and specially enacted in this act with reference to the said respective duties hereby transferred as aforesaid; and wherever in any act or acts now in force in relation to the said last-mentioned respective duties, or to stage carriages or hackney carriages, or the drivers or conductors of any such carriages, the head office for stamps or for stamps and taxes, or the solicitor of stamps or for stamps and taxes, or any officer of stamp duties or for stamps and taxes, is mentioned or designated, the same shall in relation to the said respective duties hereby transferred as aforesaid, and to stage carriages and hackney carriages, and the said drivers and conductors respectively, be deemed and taken to mean the chief office of excise in London, the solicitor of excise, and any officer of excise respectively.

III. That every bond which before or upon the said fifth day of September shall have been given by the proprietor or company of proprietors of any railway for accounting for and paying to the Receiver-General or any other officer or officers of stamps and taxes the said duties for and in respect of passengers conveyed upon railways, and every transfer of stock or deposit of exchequer bills which shall have been made in lieu of giving any such bond as aforesaid, shall, so far as relates to such duties as shall become payable at any time and from time to time after the said last-mentioned day respectively, be and remain a good and valid security for accounting for and paying over the said last-mentioned duties to the Receiver-General or other officer or officers of excise, and for that

(*b*) See ante, 15.

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purpose, wherever in the condition of any such bond, or in any declaration relating to any such transfer or deposit as aforesaid, the terms and expressions following occur; (that is to say), "Commissioners of Stamps and Taxes," "Receiver-General of Stamps and Taxes," "Officer of Stamp Duties," or "Head Office for Stamps and Taxes in the City of Westminster," the same, so far as relates to the said duties which shall become payable after the said last-mentioned day, shall be severally construed and read as if the following terms and expressions had been inserted in the said condition or declaration, and severally substituted for and in lieu of the said former terms and expressions; (that is to say), "Commissioners of Excise" for and in lieu of "Commissioners of Stamps and Taxes," "Receiver-General of Excise" for and in lieu of "Receiver-General of Stamps and Taxes," "Officer of Excise" for and in lieu of "Officer of Stamp Duties," and "Chief Office of Excise in the City of London" for and in lieu of "Head Office for Stamps and Taxes in the City of Westminster;" and in all proceedings at law or in equity touching or concerning any of the said duties which shall become payable after the said last-mentioned day, the condition of any such bond and every such declaration as aforesaid shall respectively be pleaded and read as if such substituted terms and expressions had been originally inserted therein for and in lieu of the said other terms and expressions.

IV. That nothing herein contained shall extend or be construed to terminate, affect or alter any licence which shall have been granted with relation to any of the said respective duties on or before the said fifth day of September, and which shall then be unexpired and in full force, but that every such licence shall remain and continue as valid and effectual for the purposes for which the same was granted, until the expiration thereof by effluxion of time or otherwise, as it would have been if this act had not been passed.

Act not to affect existing licences.

V. That nothing herein contained shall extend or be deemed or construed to extend to any arrears of the said duties or to any penalties which shall respectively have been or be or become due or payable, or have been or be incurred, before or upon the said fifth day of September, or to any offence committed before or upon the said last-mentioned day, but that all such arrears of duty and all such penalties as aforesaid shall respectively be collected, received, sued for, and recovered, and all such offences shall be dealt with and punished as if this act had not been passed.

Act not to extend to arrears of duty or penalties incurred or offences committed on or before 5th Sept. 1847.

10 & 11 VICT. CAP. 69.

An Act for the more effectual Taxation of Costs on Private Bills in the House of Commons (c). [22nd July, 1847.]

Whereas an act was passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled "An Act to establish a Taxation of Costs on Private Bills in the House of Commons, and to prohibit the Sale of certain Offices under the Serjeant at Arms attending the House of Commons:" And whereas it is expedient to repeal the same, and to make more effectual provision for taxing the costs and expenses to be charged by parliamentary agents, attornies, solicitors and others in future sessions of Parliament, in respect of bills subject to the payment of fees in Parliament, commonly called private bills, and to be incurred in complying with the standing orders of the House of Commons relative to such bills, and in preparing, bringing in and carrying the same through, or in opposing the same in, the House of Commons: Be it enacted, That, except as to any costs, charges and expenses which shall have been incurred in the present or any preceding session of Parliament, the said recited act shall be repealed: Provided always, that the repeal of the said recited act shall not be construed to revive any act or any provision thereof which was thereby repealed.

6 Geo. 4, c. 123,

repealed.

II. That no parliamentary agent, attorney or solicitor, nor any executor, administrator or assignee of any parliamentary agent, attorney or solicitor, shall commence or maintain any action or suit for the recovery of any costs, charges or expenses in respect of any proceedings in the House of Commons in any future session of Parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in and carrying the same through, or opposing the same in, the House of Commons, until the expiration of one month after such parliamentary agent, attorney or solicitor, or executor, administrator or assignee of such parliamentary agent, attorney or solicitor, has delivered unto the party to be charged therewith, or sent by post to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a bill of such costs, charges and expenses, and which bill shall either be subscribed with the proper hand of such parliamentary agent, attorney or solicitor, or, in the case of a partnership, by any of the partners, either with his own name or with the name of such partnership, or of the executor, administrator or assignee of such parliamentary agent,

Parliamentary agent, attorney, or solicitor not to sue for costs until one month after delivery of his bill.

(c) See ante, text, 35, and 38, note (f). House of Lords, 12 & 13 Vict. c. 78, post. See a similar statute relating to costs in the

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Evidence of
delivery of bill.

Power to judge to
authorize action
before expiration
of one month.

Taxing officer to
be appointed by
the speaker.

The speaker to
prepare list of
charges thence-
forth to be
allowed.

Taxing officer
empowered to
examine parties
and witnesses on
oath.

Taxing officer
empowered to
call for books and
papers.

Taxing officer to
take such fees as
may be allowed
by House of
Commons.

Application of
fees.

On application of
party chargeable,
or on application
of parliamentary
agent, attorney,
or solicitor, the
taxing officer to
tax the bill.

attorney or solicitor, or be enclosed in or accompanied by a letter subscribed in like manner referring to such bill: Provided always, that it shall not in any case be necessary, in the first instance, for such parliamentary agent, attorney or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney or solicitor, in proving a compliance with this act, to prove the contents of the bill delivered, sent or left by him, but it shall be sufficient to prove that a bill of costs, charges and expenses subscribed in manner aforesaid, or inclosed in or accompanied by such letter as aforesaid, was delivered, sent or left in manner aforesaid, but nevertheless it shall be competent for the other party to show that the bill so delivered, sent or left was not such a bill as constituted a bonâ fide compliance with this act: Provided also, that it shall be lawful for any judge of the superior courts of law or equity in England or Ireland, or of the court of session in Scotland, to authorize a parliamentary agent, attorney or solicitor to commence an action or suit for the recovery of his costs, charges and expenses against the parties chargeable therewith, although one month has not expired from the delivery of a bill as aforesaid, on proof to the satisfaction of the said judge that there is probable cause for believing that such party is about to quit that part of the United Kingdom in which such judge hath jurisdiction.

III. That the speaker of the House of Commons shall appoint a fit person to be the taxing officer of the House of Commons, and every person so appointed shall hold his office during the pleasure of the speaker, and shall execute the duties of his office conformably to such directions as he may from time to time receive from the speaker.

IV. That the speaker may from time to time prepare a list of such charges as it shall appear to him that, after the present session of Parliament, parliamentary agents, attorneys, solicitors and others may justly make with reference to the several matters comprised in such list; and the several charges therein specified shall be the utmost charges thenceforth to be allowed upon the taxation of any such bill of costs, charges and expenses in respect of the several matters therein specified; provided always, that the said taxing officer may allow all fair and reasonable costs, charges and expenses in respect of any matters not included in such list.

V. That for the purpose of any such taxation the said taxing officer may examine upon oath any party to such taxation, and any witnesses who may be examined in relation thereto, and may receive affidavits, sworn before him or before any master or master extraordinary of the High Court of Chancery, relative to such costs, charges or expenses; and any person who on such examination on oath, or in any such affidavit, shall wilfully or corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

VI. That the said taxing officer shall be empowered to call for the production of any books or writings in the hands of any party to such taxation relating to the matters of such taxation; provided always, that nothing herein contained shall be construed to authorize such taxing officer to determine the amount of fees which may have been payable to the House of Commons in respect of the proceedings upon any private bill.

VII. That it shall be lawful for the said taxing officer to demand and receive for any such taxation such fees as the House of Commons may from time to time by any standing order authorize and direct, and to charge the said fees, and also to award costs of such taxation against either party to such taxation, or in such proportion against each party, as he may think fit; and he shall pay and apply the fees so received by him in such manner as shall be directed by any such standing order as aforesaid.

VIII. That if any person upon whom any demand shall be made by any parliamentary agent, attorney or solicitor, or executor, administrator or assignee of such parliamentary agent, attorney, or solicitor, or other person, for any costs, charges or expenses in respect of any proceedings in the House of Commons in any future session of parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in or carrying the same through, or in opposing the same in, the House of Commons, or if any parliamentary agent, attorney or solicitor, or the executor, administrator or assignee of such parliamentary agent, attorney or solicitor, or other person, who shall be aggrieved by the non-payment of any costs, charges and expenses incurred or charged by him in respect of any such proceedings as aforesaid, shall make application to the said taxing officer at his office for the taxation of such costs, charges and expenses, the said taxing officer, on receiving a true copy of the bill of such costs, charges and expenses which shall have been duly delivered as aforesaid to the party charged therewith, shall in due course proceed to tax and settle the same; and upon every such taxation, if either the parliamentary agent, attorney or solicitor, or the executor, administrator or assignee of such parliamentary agent, attorney, or solicitor or other person, by whom such demand shall be made as aforesaid, or the party charged with such bill of costs, charges and expenses, having due notice, shall refuse or neglect to attend such taxation, the said taxing officer may proceed to tax and settle such bill and demand ex parte; and if depending such taxation any action or other proceeding shall be commenced for the recovery of such bill of costs, charges and expenses, the court or judge before whom the same shall be brought shall stay all proceedings thereon until the amount of such bill shall

have been duly certified by the speaker as hereinafter provided: provided always, that no such application shall be entertained by the said taxing officer if made by the party charged with such bill after a verdict shall have been obtained or a writ of inquiry executed in any action for the recovery of the demand of any such parliamentary agent, attorney or solicitor, or the executor, administrator or assignee of such parliamentary agent, attorney or solicitor or other person, or after the expiration of six months after such bill shall have been delivered, sent or left as aforesaid; provided also, that if any such application shall be made after the expiration of six months as aforesaid, it shall be lawful for the speaker, if he shall so think fit, on receiving a report of special circumstances from the said taxing officer, to direct such bill to be taxed.

IX. That the said taxing officer shall, if required by either party, report his taxation to the speaker, and in such report shall state the amount fairly chargeable in respect of such costs, charges and expenses, together with the amount of costs and fees payable in respect of such taxation as aforesaid; and within twenty-one clear days after any such report shall have been made either party may deposit in the office of the said taxing officer a memorial, addressed to the speaker, complaining of such report or any part thereof, and the speaker may, if he shall so think fit, refer the same, together with such report, to the said taxing officer, and may require a further report in relation thereto, and on receiving such further report may direct the said taxing officer, if necessary, to amend his report; and if no such memorial be deposited as aforesaid, or so soon as the matters complained of in any such memorial shall have been finally disposed of, the speaker shall, upon application made to him, deliver to the party concerned therein, and requiring the same, a certificate of the amount so ascertained, which certificate shall be binding and conclusive on the parties as to the matters comprised in such taxation, and as to the amount of such costs, charges and expenses, and of the costs and fees payable in respect of such taxation, in all proceedings at law or in equity or otherwise; and in any action or other proceeding brought for the recovery of the amount so certified such certificate shall have the effect of a warrant of attorney to confess judgment; and the court in which such action shall be commenced, or any judge thereof, shall, on production of such certificate, order judgment to be entered up for the sum specified in such certificate in like manner as if the defendant in any such action had signed a warrant to confess judgment in such action to that amount; provided always, that if such defendant shall have pleaded that he is not liable to the payment of such costs, charges and expenses, such certificate shall be conclusive only as to the amount thereof which shall be payable by such defendant in case the plaintiff shall in such action recover the same.

X. That in the construction of this act the word "month" shall be taken to mean a calendar month; and every word importing the singular number only shall extend and be applied to several persons, matters or things as well as one person, matter or thing; and every word importing the plural number shall extend and be applied to one person, matter or thing as well as several persons, matters or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the word "person" shall extend to any body politic, corporate or collegiate, municipal, civil or ecclesiastical, aggregate or sole, as well as an individual; and the word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other person allowed by law to make a declaration instead of making an oath; unless in any of the cases aforesaid it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

XI. That in citing this act in other acts of Parliament, and in legal and other instruments, it shall be sufficient to use the expression "The House of Commons Costs Taxation Act, 1847."

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No application to be entertained by taxing officer after verdict obtained.

Taxing officer to report to the speaker.

If either party complain of report, they may deposit a memorial, and the speaker may require a further report.

If no memorial deposited, speaker may issue certificate of the amount found due.

Certificate to have the effect of a warrant to confess judgment.

Construction of certain words in this act.

Form of citing the act.

10 & 11 VICT. CAP. 85.

An Act for giving further Facilities for the Transmission of Letters by Post, and for the regulating the Duties of Postage thereon, and for other Purposes relating to the Post Office.

[22nd July, 1847.]

Sect. 16. And whereas by an act passed in the second year of the reign of her present Majesty, intituled "An Act to provide for the Conveyance of the Mails by Railways" (d), provision is made for the transmission of the mails by railways; Be it enacted, That it shall be lawful for the postmaster-general to require, in the manner prescribed by the said last-mentioned act, that any mails and post letter bags shall be conveyed and forwarded by any railway company on their railway, under and pursuant to the said act, notwithstanding any guard or other officer of the post office shall not be sent with the same or in charge thereof, and such mails and post letter bags shall be conveyed and forwarded by such railway company accordingly.

Power to send mails by railways in manner prescribed by 1 & 2 Vict. c. 98, without a guard.

(d) Ante, p. 2, and see note (c).

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10 & 11 VICT. CAP. 94.

An Act to amend an Act to enable Canal Companies to become Carriers upon their Canals (e). [22nd July, 1847.]

11 & 12 VICT. CAP. 3.

An Act to give further time for making certain Railways. [20th December, 1847.]
This act having expired is omitted in this edition.

11 & 12 VICT. CAP. 72.

An Act to amend the Acts relating to the Constabulary Force in Ireland, and to amend the Provisions for the Payment of Special Constables. [31st August, 1848.]

Power to Lord Lieutenant, &c. to fix salaries of constables.

Whereas it is expedient to alter and amend several provisions of the acts relating to the constabulary force in Ireland: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the lord lieutenant, or other chief governor or governors of Ireland, to fix and appoint such annual salary as may from time to time to him or them seem proper to be paid to each constable appointed or to be appointed under any of the acts now in force relating to the constabulary force in Ireland, not exceeding thirty-eight pounds for each mounted constable, and thirty-six pounds for each dismounted constable, and to direct that such annual salary shall commence on and from the first day of April in this present year.

Rate of charge on counties and boroughs for constabulary force appointed on application of town council of a borough.

3 & 4 Vict. c. 108.

IV. And whereas it is expedient to fix and determine the sum to be charged upon each county, or any part or district thereof, or any county of a city or county of a town in Ireland, in all cases where by the laws now in force one moiety of the costs and expenses of any constabulary force is chargeable thereupon respectively, and also the sum to be charged upon any borough for which a constabulary force shall be appointed in compliance with a memorial from the town council of such borough, in pursuance of an act of the third and fourth years of the reign of her present Majesty, intituled "An Act for the Regulation of Municipal Corporations in Ireland:" be it enacted, that from and after the thirty-first day of March, one thousand eight hundred and forty-eight, in all such cases as aforesaid there shall be chargeable to each such county, county of a city, county of a town or borough, per annum for each sub-inspector one moiety of the sum of one hundred and sixty pounds, for each head constable one moiety of the sum of seventy pounds, and for each constable or sub-constable one moiety of the sum of thirty-five pounds, two shillings and sixpence, and so in proportion for every fractional part of a year.

Proportion of sub-inspectors and head constables to additional force appointed on certificate of magistrates, or application from town council of a borough.

V. And be it enacted, that in all cases where an additional constabulary force shall have been certified by the magistrates of any county at large, at any general or special sessions, as now by law provided to be necessary for the due execution of the law within such county, and shall be appointed in conformity with such certificate, and also in all cases where an additional constabulary force shall be appointed for any borough in pursuance of the provisions of the said act of the third and fourth years of the reign of her present Majesty, it shall be lawful for the lord lieutenant or other chief governor or governors of Ireland to appoint one sub-inspector for every fifty constables and sub-constables, and one head-constable for every twenty-five constables and sub-constables, who may have been so appointed; and the expense of such sub-inspectors and head-constables shall be chargeable upon such county or borough respectively, and be repaid by grand jury presentment, or from the borough fund, in the same manner as the expense of the constables and sub-constables who may have been so appointed.

Where constabulary shall be required under 8 & 9 Vict. c. 46, to keep the peace near railway works, company, &c. requiring the same to pay the expense.

VII. And whereas by an act of the eighth and ninth years of her present Majesty's reign, intituled "An Act for the Appointment of additional Constables for keeping the Peace near Public Works in Ireland" (f), provision is made for the appointment and payment of additional head and other constables for keeping the peace in certain cases in the neighbourhood of railway works or other public works in Ireland: be it enacted, that, whenever such additional head or other constables shall have been or shall be appointed and employed for the purposes and under the provisions of the said last-recited act, the company or other parties carrying on such railway or other public works shall be chargeable for the expense of such head and other constables as in the said act provided,

(e) See ante, 101, note (s).

(f) Ante, p. 101.

but according to the proportion of head and other constables hereinbefore provided, and also according to the scale of charge hereinbefore provided for head and other constables, save that such company or parties shall be chargeable for the whole and not for the moiety only of such respective rates of charge.

IX. And be it enacted, that from and after the passing of this act the officers and men of the constabulary force shall have the same rights, powers and authorities in and for each of the counties, counties of cities, and counties of towns immediately adjacent to that to which they may have been appointed, as if they had been appointed for such counties, counties of cities, or counties of towns respectively.

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Constabulary to act in adjacent counties.

12 & 13 VICT. CAP. 78.

An Act for the more effectual Taxation of Costs on Private Bills in the House of Lords, and to facilitate the Taxation of other Costs on Private Bills in certain Cases (f). [28th July, 1849.]

Whereas an act was passed in the seventh year of the reign of his late Majesty King George the Fourth, intituled "An Act to establish a Taxation of Costs on Private Bills in the House of Lords:" And whereas it is expedient to repeal the same, and to make more effectual provision for taxing the costs and expenses to be charged by parliamentary agents, attornies, solicitors and others, in future sessions of Parliament, in respect of bills subject to the payment of fees in Parliament, commonly called private bills, and to be incurred in complying with the standing orders of the House of Lords relative to such bills, and in preparing, bringing in, and carrying the same through, or in opposing the same in, the House of Lords, and to facilitate the taxation of other costs incurred in respect of private bills, in certain cases: Be it enacted, That, except as to any costs, charges, and expenses which shall have been incurred in the present or any preceding session of Parliament, the said recited act shall be repealed.

7 & 8 Geo. 4, c. 64,

repealed.

II. That no parliamentary agent, attorney or solicitor, nor any executor, administrator or assignee of any parliamentary agent, attorney or solicitor, shall commence or maintain any action or suit for the recovery of any costs, charges or expenses in respect of any proceedings in the House of Lords in any future session of Parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in, and carrying the same through, or opposing the same in, the House of Lords, until the expiration of one month after such parliamentary agent, attorney or solicitor, or executor, administrator or assignee, of such parliamentary agent, attorney or solicitor, has delivered unto the party to be charged therewith, or sent by post to or left for him at his counting-house, office of business, dwelling-house or last known place of abode, a bill of costs, charges and expenses, and which bill shall either be subscribed with the proper hand of such parliamentary agent, attorney or solicitor, or in case of a partnership by any of the partners, either with his own name or with the name of such partnership, or of the executor, administrator or assignee of such parliamentary agent, attorney or solicitor, or be inclosed in or accompanied by a letter subscribed in like manner referring to such bill: Provided always, that it shall not in any case be necessary, in the first instance, for such parliamentary agent, attorney or solicitor, or the executor, administrator or assignee of such parliamentary agent, attorney or solicitor, in proving a compliance with this act, to prove the contents of the bill delivered, sent or left by him, but it shall be sufficient to prove that a bill of costs, charges and expenses, subscribed in manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent or left in manner as aforesaid; but nevertheless it shall be competent for the other party to show that the bill so delivered, sent or left was not such a bill as constituted a bonâ fide compliance with this act: Provided also, that it shall be lawful for any judge of the superior courts of law or equity in England or Ireland, or of the court of session in Scotland, to authorize a parliamentary agent, attorney or solicitor to commence an action or suit for the recovery of his costs, charges and expenses against the party chargeable therewith, although one month has not expired from the delivery of a bill as aforesaid, on proof to the satisfaction of the said judge that there is probable cause for believing that such party is about to quit that part of the United Kingdom in which such judge hath jurisdiction.

Parliamentary agent, attorney, or solicitor not to sue for costs, until one month after delivery of his bill.

Evidence of delivery of bill.

Power to judge to authorize action before expiration of one month.

III. That the clerk of the Parliaments, when discharging the duties of his office in person, or in his absence the clerk assistant, shall appoint a fit person to be the taxing officer of the House of Lords; and every person so appointed shall hold his office during the pleasure of the clerk of the Parliaments or clerk assistant, and shall execute the duties of his office conformably to such directions as he may from to time receive from the clerk of the Parliaments or clerk assistant.

Taxing officer to be appointed by the clerk of Parliaments or clerk assistant.

(f) See ante, text, 35. See a similar statute relating to costs in the House of Commons, ante, 109.

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The clerk of Parliaments or clerk assistant to prepare list of charges thenceforth to be allowed.

Taxing officer empowered to examine parties and witnesses on oath.

Taxing officer empowered to call for books and papers.

Taxing officer to take such fees as may be allowed by House of Lords.

Application of fees.

On application of party chargeable, or on application of parliamentary agent, attorney, or solicitor, the taxing officer to tax the bill.

No application to be entertained by taxing officer after verdict obtained.

Taxing officer to report to the clerk of the Parliaments.

If either party complain of report, they may deposit a memorial, and the clerk of the Parliaments may require a further report.

IV. That the clerk of the Parliaments, when discharging the duties of his office in person, or in his absence the clerk assistant, may from time to time prepare a list of such charges as it shall appear to him that, after the present session of Parliament, parliamentary agents, attornies, solicitors and others may justly make with reference to the several matters comprised in such list; and the several charges therein specified shall be the utmost charge thenceforth to be allowed upon the taxation of any such bill of costs, charges and expenses in respect of the several matters therein specified: Provided always, that the said taxing officer may allow all fair and reasonable costs, charges and expenses in respect of any matters not included in such list.

V. That for the purpose of any such taxation the said taxing officer may examine upon oath any party to such taxation, and any witnesses who may be examined in relation thereto, and may receive affidavits, sworn before him or before any master or master extraordinary of the High Court of Chancery, relative to such costs, charges or expenses; and any person who on such examination on oath or in any such affidavit shall wilfully or corruptly give false evidence shall be liable to the penalties of wilful and corrupt perjury.

VI. That the said taxing officer shall be empowered to call for the production of any books or writings in the hands of any party to such taxation relating to the matters of such taxation.

VII. That it shall be lawful for the said taxing officer to demand and receive for any such taxation such fees as the House of Lords may from time to time by any order authorize and direct, and to charge the said fees, and also to award costs of such taxation against either party to such taxation, or in such proportion against each party as he may think fit, and he shall pay and apply the fees so received by him in such manner as shall be directed by any such order as aforesaid.

VIII. That if any person upon whom any demand shall be made by any parliamentary agent, attorney or solicitor, or executor, administrator or assignee of such parliamentary agent, attorney or solicitor, or other person, for any costs, charges or expenses in respect of any proceedings in the House of Lords in any future session of Parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said house relative thereto, or in preparing, bringing in, or carrying the same through, or in opposing the same in, the House of Lords, or if any parliamentary agent, attorney or solicitor, or the executor, administrator or assignee of such parliamentary agent, attorney or solicitor, or other person, who shall be aggrieved by the nonpayment of any costs, charges and expenses incurred or charged by him in respect of any such proceedings as aforesaid, shall make application to the said taxing officer at his office for the taxation of such costs, charges and expenses, the said taxing officer, on receiving a true copy of the bill of such costs, charges and expenses which shall have been duly delivered as aforesaid to the party charged therewith, shall in due course proceed to tax and settle the same; and upon every such taxation, if either the parliamentary agent, attorney or solicitor, or the executor, administrator or assignee of such parliamentary agent, attorney or solicitor, or other person, by whom such demand shall be made as aforesaid, or the party charged with such bill of costs, charges and expenses, having due notice, shall refuse or neglect to attend such taxation, the said taxing officer may proceed to tax and settle such bill and demand ex parte; and if pending such taxation any action or other proceeding shall be commenced for the recovery of costs, charges and expenses, the court or judge before whom the same shall be brought shall stay all proceedings thereon until the amount of such bill shall have been duly certified by the clerk of the Parliaments or clerk assistant as hereinafter provided: Provided always, that no such application shall be entertained by the said taxing officer if made by the party charged with such bill after a verdict shall have been obtained or a writ of inquiry executed in any action for the recovery of the demand of any such parliamentary agent, attorney or solicitor, or the executor, administrator or assignee of such parliamentary agent, attorney or solicitor, or other person, or after the expiration of six months after such bill shall have been delivered, sent or left as aforesaid: Provided also, that if any such application shall be made after the expiration of six months as aforesaid, it shall be lawful for the clerk of the Parliaments or clerk assistant aforesaid, if he shall so think fit, on receiving a report of special circumstances from the said taxing officer, to direct such bill to be taxed.

IX. That the said taxing officer shall report his taxation to the clerk of the Parliaments or clerk assistant as aforesaid, and in such report shall state the amount fairly chargeable in respect of such costs, charges and expenses, together with the amount of costs and fees payable in respect of such taxation as aforesaid, and shall also state in such report the amount due in respect of the said costs, charges and expenses; and within twenty-one clear days after any such report shall have been made either party may deposit in the office of the clerk of the Parliaments a memorial, addressed to the clerk of the Parliaments or clerk assistant as aforesaid, complaining of such report or any part thereof, and such clerk of the Parliaments or clerk assistant as aforesaid may, if he shall so think fit, refer the same, together with such report, to the said taxing officer, and may require a further report in relation thereto, and on receiving such further report may direct the said taxing officer, if necessary, to amend his report; and if no such memorial be

deposited as aforesaid, or so soon as the matters complained of in any such memorial shall have been finally disposed of, such clerk of the Parliaments or clerk assistant as aforesaid shall, upon application made to him, deliver to the party concerned therein and requiring the same, a certificate of the amount so ascertained, which certificate shall be binding and conclusive on the parties as to the matters comprised in such taxation, and as to the amount of such costs, charges and expenses, and the amount due in respect of the same, and of the costs and fees payable in respect of such taxation, in all proceedings at law or in equity or otherwise; and in any action or other proceeding brought for the recovery of the amount so certified to be due, such certificate shall have the effect of a warrant of attorney to confess judgment; and the court in which such action shall be commenced, or any judge thereof, shall on production of such certificate, order judgment to be entered up for the sum specified in such certificate, in like manner as if the defendant in any such action had signed a warrant to confess judgment in such action to that amount: Provided always, that if such defendant shall have pleaded that he is not liable to the payment of such costs, charges and expenses, such certificate shall be conclusive only as to the amount thereof which shall be payable by such defendant in case the plaintiff shall in such action recover the same.

X. That if any bill of costs taxable by virtue of this act, or of "The House of Commons Costs Taxation Act, 1847," (g) shall comprise any costs, charges and expenses incurred in respect of a private bill, but not taxable by virtue of the act in pursuance whereof such bill shall come to be taxed, it shall be lawful for the taxing officer of the House of Lords, or for the taxing officer of the House of Commons, as the case may be, either to tax and settle such last-mentioned costs, charges and expenses, or to request the taxing officer of the other House of Parliament, or the proper officer of any other court having such an officer, to assist him in taxing and settling any part of such bill; and such officer so requested shall thereupon proceed to tax and settle the same, and shall return the same, with his opinion thereupon, to the officer who shall have so requested him to tax and settle the same; and in taxing such costs, charges and expenses the taxing officer of the House of Lords and the taxing officer of the House of Commons respectively shall have the same powers and may receive the same fees in respect of such taxation as if such costs, charges and expenses were taxable by virtue of this act, or of "The House of Commons Costs Taxation Act, 1847," as the case may be; and the proper officer of any court so requested to tax the same shall have the same powers and may receive the same fees as upon a reference from the court of which he is such officer.

XI. That the taxing officer of the House of Lords, or the taxing officer of the House of Commons, as the case may be, may include the amount of such last-mentioned costs, charges and expenses in the report of his taxation of any such bill of costs; and in case the clerk of the Parliaments or clerk assistant, or the speaker of the House of Commons, as the case may be, shall deliver a certificate of the amount so ascertained and declared in such report, including such last-mentioned costs, charges and expenses, such certificate shall have the same force and effect as if the whole of such bill of costs were taxable by virtue of the act in pursuance whereof such certificate shall be so delivered.

XII. That in case the taxing officer of the House of Lords, or the taxing officer of the House of Commons, shall be requested by the proper officer of any other court to assist him in taxing and settling any costs, charges and expenses incurred in respect of a private bill, being part of any bill of costs which shall have been referred to him by the court of which he is such officer, such taxing officer so requested shall thereupon proceed to tax and settle the same, and shall return the same, with his opinion thereupon, to the officer who shall have so requested him to tax and settle the same, and shall have the same powers and may receive the same fees in respect of such taxation, as if application had been made to him for the taxation thereof in pursuance of this act, or of "The House of Commons Costs Taxation Act, 1847" (g), as the case may be.

XIII. That it shall be lawful for the taxing officer of the House of Lords, and for the taxing officer of the House of Commons, to take an account between the parties to any taxation under this act or "The House of Commons Costs Taxation Act, 1847," of all sums of money paid or received in respect of any bill of costs which is the subject of such taxation, or any matters contained therein, and to report the amount of all such sums of money and the amount due in respect of such bills of costs.

XIV. That in the construction of this act the word "month" shall be taken to mean a calendar month; and every word importing the singular number only shall extend and be applied to several persons, matters or things, as well as one person, matter or thing; and every word importing the plural number shall extend and be applied to one person, matter or thing, as well as several persons, matters or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the word "person" shall extend to any body politic, corporate or collegiate, municipal, civil or ecclesiastical, aggregate or sole, as well as an individual; and the word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other person allowed by law to make a declaration instead

APPENDIX.

If no memorial deposited, clerk of the Parliaments may issue certificate of the amount found due.

Certificate to have the effect of a warrant to confess judgment.

Taxing officer of either house may tax costs not otherwise taxable under the act by virtue of which any bill shall be taxed; and may request other officers to assist him.

Such officers to have the same powers as in taxing other costs.

Taxing officers to include certain costs in their reports, and certificates of the amount to be delivered.

Officers of other courts may request the taxing officer of either house to tax parts of bills.

Taxing officer of either house may take an account between the parties.

Construction of certain words in this act.

APPENDIX.

Form of citing
the act.

of taking an oath ; unless in any of the cases aforesaid it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

XV. That in citing this act in other acts of Parliament, and in legal and other instruments, it shall be sufficient to use the expression "The House of Lords Costs Taxation Act, 1849."

13 & 14 VICT. CAP. xxxiii.

An Act for regulating legal Proceedings by or against the Committee of Railway Companies associated under the Railway Clearing System, and for other Purposes (h).
[25th June, 1850.]

Whereas for some time past arrangements have subsisted between several railway companies for the transmission without interruption of the through traffic in passengers, animals, minerals and goods passing over different lines of railway, for the purpose of affording, in respect to such passengers, animals, minerals and goods, the same or the like facilities as if such lines had belonged to one company, which arrangements are commonly known as and in this act are designated as "the clearing system," and which arrangements are conducted under the superintendence of a committee appointed by the boards of directors of such several railway companies, which committee is in this act designated "the committee," and the business of such committee has heretofore been and is now carried on at a building appropriated for the purpose in Seymour Street, adjoining the Euston station of the London and North Western Railway Company : And whereas the clearing system has been productive of great convenience to the public, and of a considerable saving of expense in the transmission of passengers, animals, minerals and goods over the lines of the several railway companies parties to such association ; but considerable difficulty has been experienced in carrying into effect the objects of the association, in consequence of the committee not possessing the power of prosecuting or defending actions or suits, or taking other legal proceedings : And whereas George Carr Glyn, Esquire, is the present chairman, and Kenneth Morison is the present secretary of the committee : And whereas the purposes aforesaid cannot be effected without the authority of Parliament : May it therefore please your Majesty that it may be enacted ; and be it enacted by (&c. &c.), That the several companies which at the time of the passing of this act are parties to the clearing system, and every other company which shall in manner hereafter mentioned become party to the same, shall be subject to the provisions of this act.

Companies parties to the clearing system to be subject to the provisions of this act.

Other companies may join, with assent of committee.

II. And be it enacted, That if any company which may not be a party to the clearing system shall, by writing sealed with the common seal of such company, request the committee to admit such company to be a party to the clearing system, and the committee shall assent to such request, such company shall from the time of such assent being given, or at such other time as may be specified in the said request, become a party to the clearing system.

Companies may retire, on giving notice.

III. And be it enacted, That if any company shall, by writing sealed with the common seal of such company, give notice to the committee of the desire of such company to cease to be a party to the clearing system, such company shall, at the expiration of one calendar month from the time when such notice shall be given, or if a more distant time shall be stated in such notice then at the time so stated, cease to be a party to the clearing system.

Committee may give company notice to retire.

IV. And be it enacted, That if not less than two-thirds of the committee present at a meeting specially summoned shall, by writing signed by their secretary or by two members of the committee, give notice to any company that such company shall cease to be a party to the clearing system at a time named in such notice, not being less than one calendar month from the time of giving such notice, such company shall at the time so named cease to be a party to the clearing system.

Each company to appoint a member of the committee.

V. And be it enacted, that each company party to the clearing system shall at all times be entitled to be represented on the committee by one delegate appointed by the board of directors of such company from time to time, such appointment to be certified in writing by the secretary or any two directors of such company : Provided always, that, notwithstanding any company may happen to be unrepresented by a delegate at any meeting, the acts of the committee shall be valid.

Meetings of the committee, quorum, &c.

VI. And be it enacted, That the committee shall meet at one of the clock in the afternoon of the second Wednesday in the months of March, June, September and December in every year, or so soon thereafter as a quorum shall be assembled, and at any other times whereof the secretary shall, at the written request of the chairman for the time being, or any two members of the committee, give at least ten days' notice in writing to every company party to the clearing system, or the secretary of every such company ; and

(h) The "Irish Clearing House Act" is 23 & 24 Vict. c. xxix. post.

APPENDIX.

every such meeting may be adjourned from time to time and from place to place as the committee shall think proper; and meetings and adjourned meetings of the committee shall be held at the said building in Seymour Street, except when the committee shall have appointed some other place, and then at such other place; and in order to constitute a meeting of the committee there shall be present at least ten members; and, except where otherwise provided, all questions at every meeting shall be determined by the majority of votes of the committee present, and in case of an equal division of votes the chairman of the meeting shall have a casting vote, in addition to his vote as one of the committee; and notice of the business to be brought before any meeting shall, at least six days before the day of such meeting, be given to every company party to the clearing system, or the secretary of every such company.

VII. And be it enacted, That until the first meeting of the committee which shall be held after the passing of this act the said George Carr Glyn, or other the chairman of the committee for the time being, shall continue in office; and at the first meeting of the committee which shall be held after the passing of this act, and in the month of March in each succeeding year, the committee present at the meeting shall, if they think fit, either continue in office the chairman for the time being, or choose another chairman; and a general meeting of the committee specially summoned shall have power to remove any chairman; and if any chairman shall die, or resign, or be removed, the committee shall have power, as soon as may be, to choose some other person to fill the vacancy thereby occasioned; but every chairman elected to supply a vacancy other than at a general meeting in the month of March in any year shall continue in office so long only as the person in whose place he shall be so elected would have been entitled to continue if such death, resignation or removal had not happened: Provided always, that it shall not be necessary that the person chosen as chairman be a delegate of any of the companies parties to the clearing system; but in case he shall not be a delegate he shall not be entitled to vote on any question, unless in the case of an equality of votes, when he shall be entitled to give the casting vote.

Appointment of the chairman.

VIII. And be it enacted, That if at any meeting of the committee the chairman shall not be present the committee present shall choose one of their members to be chairman of such meeting.

In the absence of chairman, committee to elect a chairman.

IX. And be it enacted, That the said Kenneth Morison shall be the secretary to the committee until he die, or resign, or be removed; and that the committee shall have the power to remove him and all future secretaries; and that in the event of the resignation, or death, or such removal as aforesaid of any secretary, the committee shall appoint a secretary to the committee.

Appointment of Secretary.

X. And be it enacted, That the committee may from time to time appoint a treasurer, and remove such treasurer from his appointment, and prescribe and alter the duties of the office of treasurer, and take from the treasurer such security as they shall think fit, which security may be taken in the name or names of such person or persons as the committee approve of.

Appointment of treasurer.

XI. And be it enacted, that any money which shall be received by the committee shall be held by the committee as trustees for the company or companies to whom the committee shall decide such money to be payable; but no member of the said committee shall be answerable for any such money as may be lost or withheld by reason of the misconduct, default or insolvency of the treasurer, or of any banker or agent, in whose hands the same may be, or by reason of any cause other than the personal misconduct of such member.

As to monies received by committee.

XII. And be it enacted, That the accounts of the clearing system, and the balances due to and from the several companies parties thereto, shall be settled and adjusted by the secretary of the committee for the time being, which secretary shall also settle and determine the amount to be from time to time contributed to the funds of the clearing system by the companies parties thereto; and in case of any difference respecting such accounts the decision of the committee, to the effect that any balance or sum is payable by any company then or theretofore party to the clearing system, shall be final and conclusive, and such sum or balance shall be a debt due to the said committee.

Accounts to be settled, and balance ascertained and declared by the committee.

XIII. And be it enacted, that the committee shall, out of the funds of the clearing system, pay all the expenses of the clearing system, and all costs, charges, damages and expenses which the members of the committee, or any or either of them, shall as such members or member, or which the secretary as nominal plaintiff or defendant, or other party, on behalf of the committee, bear, sustain or be put to, and that the members of the committee and secretary shall be completely indemnified and saved harmless out of the funds of the clearing system, and by the companies parties to the clearing system, of, from and against all action and actions, suit and suits, proceeding and proceedings, of any sort, costs, charges, damages and expenses, to which they or any or either of them may in any way be subjected, as members or member of the committee, by reason of anything which they or he may bona fide do or omit to do, whether such deed or omission be within their powers or not.

Expenses to be paid out of the funds of the clearing system.

XIV. And be it enacted, That the committee may, by action of debt in the name of their secretary, recover from any company any balance or sum which such committee shall

Committee may sue for balances or sums due.

APPENDIX.

Form of action for the recovery of such balances or sums.

Evidence.

Plea.

Entries in books.

Books of the committee to be *prima facie* evidence, and the committee and secretary to be competent witnesses.

Committee may sue or be sued in the name of their secretary.

In criminal proceedings, property of committee to be deemed the property of secretary.

Criminal proceedings to be prosecuted in name of secretary.

Service of notices.

decide to be payable by such company, whether to any other company or on account of the clearing system, and whether such company be still at the time of such decision or has then ceased to be a party to the clearing system, and whether such sum or balance shall or shall not have been previously ascertained by the secretary to be payable.

XV. And be it enacted, That the declaration for the recovery of such sum or balance may be in the form or to the effect of the form given in the Schedule (A.) to this act annexed, and that the directions contained in the said schedule for the use of the same shall be taken as part of this act.

XVI. And be it enacted, That if the defendants in such action shall plead that they never were indebted, then, on proof that the committee decided the sum in question to be payable by the defendants, and that the defendants were either at the time of such decision or at some previous time a party to the clearing system, and in the latter case upon further proof that such sum was decided to be payable in respect of some transactions, matters or expenses which happened or were sustained whilst the defendants were parties to the clearing system, the plaintiff shall be entitled to a verdict on that plea.

XVII. And be it enacted, That the defendants in such action may plead any matter showing that they have since the time of the decision discharged the sum or balance so decided to be payable, and shall not plead any plea with a plea denying the plaintiff to be secretary.

XVIII. And be it enacted, That the committee shall cause notes, minutes or copies, as the case may require, of all appointments made or contracts entered into by them, and of the orders and proceedings of all their meetings, to be duly entered in books to be kept by them for that purpose; and every such entry shall be signed by the chairman of the meeting at which such appointments, contracts, orders or proceedings respectively took place, who shall add the word "chairman" to his signature, and which entries may be made and signed either at or after the meetings to which they respectively relate; and every entry purporting to be so signed shall be received as evidence in all courts, and before all judges, justices and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being members of the committee, or of the signature of such chairman, or of the fact of his having been chairman, all which last-mentioned matters shall be presumed, till the contrary be proved.

XIX. And be it enacted, That on the trial of any such action, after it is proved to the satisfaction of the court or judge trying the cause that such company is or had once been such a party, the books kept by the committee shall be *prima facie* evidence of the truth of the matters therein stated and contained; and the secretary, although the nominal plaintiff, and the members of the committee, shall be competent witnesses, either for the plaintiff or for the defendants.

XX. And be it enacted, That the committee may in all cases sue and be sued in the name of the secretary to the committee; and that in all proceedings at law and in equity, and in bankruptcy, or of any other sort, whether civil or criminal, the name of the secretary may be used instead of the names of the members of the committee; and proofs, in cases of bankruptcy, insolvency or in winding up affairs, may be made by the secretary for the committee.

XXI. And be it enacted, That in any indictment or information for any felony or misdemeanor wherein it shall be necessary to state the ownership of any property whatsoever, whether real or personal, and the same shall either belong to the committee or be in their custody, or in the custody or possession of any officer, clerk or servant of the committee, or of any person employed for the purpose or in the capacity of clerk or servant by the committee, or in or on any building or land used for the purposes of the clearing system, or shall be used or intended to be used for the purposes of the clearing system, it shall be sufficient to state such property to belong to the secretary of the committee.

XXII. And be it enacted, That in any indictment for embezzlement, wherein it shall be necessary to state the party charged with the embezzlement to have been the clerk or servant of some master or masters, or to have been employed for the purpose or in the capacity of clerk or servant by some master or masters, and such masters shall have been the committee, it shall be sufficient in such indictment to name the secretary of the committee in every place in such indictment where the names of the members of the committee would but for this enactment be required to be inserted.

XXIII. And be it enacted, That every notice or requisition on the business of the clearing system, or given pursuant to this act, shall be sufficient if it be in writing signed by the secretary of the committee, or secretary or other officer of the company giving the same, and if it be sent by the General Post addressed to the secretary of the company for whom the same is intended, in case such notice or requisition be intended for any company, or to the secretary at the principal office of the clearing system, in case such notice or requisition be intended for the committee; and proof of such notice or requisition being deposited in any public letter box or receiving house for letters, intended to be forwarded by the General Post, shall be deemed proof of the due service of such notice or requisition; and notices or requisitions for each member of the committee shall be sufficient if sent in manner aforesaid, addressed to him at the principal office of the company whom he represents.

APPENDIX.

Mode in which the companies and committee are to be described in legal proceedings.

Description of the secretary in legal proceedings.

Actions, &c. not to abate on death or removal of secretary.

Expenses of act.

Short title and public act.

XXIV. And be it enacted, That in all pleadings or proceedings, civil or criminal, when it shall be required to mention all the companies parties to the clearing system, or the committee, it shall be sufficient to mention the companies by the description of "The Companies Parties to the Clearing System mentioned in the Railway Clearing Act, 1850," and to describe the committee by the description of "The Clearing Committee mentioned in the Railway Clearing Act, 1850," without stating the names of the individual companies and members.

XXV. And be it enacted, That in all cases where the name of the secretary to the committee shall be used under the authority of this act it shall be sufficient to name and describe him, and to state the authority for using his name, as in the form of declaration in Schedule (A.)

XXVI. And be it enacted, That upon the death or removal of any secretary no action or suit or other proceeding pending in his name, as plaintiff or defendant or otherwise, either on behalf of or against the committee, shall abate or be stayed, but as soon as another secretary shall be appointed the name of such new secretary shall be thereafter used; and in an action at law such name shall, whether it be before or after judgment, be introduced by suggestion, to which no plea or demurrer shall be allowed; and the omission to make such suggestion, and an erroneous suggestion, shall be mere irregularities, and shall, on the application of the committee or of the party opposed to the committee, be rectified, but shall not otherwise be taken advantage of.

XXVII. And be it enacted, That all the costs, charges and expenses of obtaining and passing this act or incident thereto shall be paid by the said committee out of the first monies which shall come to their hands after the passing of this act.

XXVIII. And be it enacted, That this act may be called "The Railway Clearing Act, 1850," and shall be deemed to be a public act, and as such shall be judicially noticed.

SCHEDULE (A.)

to wit. } A. B., secretary to the clearing committee, and now named by virtue of the Railway Clearing Act, 1850, by C. D. his attorney, complains of X. Y., who have been summoned to answer the said A. B. in an action of debt, for that the clearing committee have decided that the sum of 100*l.* is payable by the defendants, as parties to the clearing system, by means whereof an action has accrued to the said committee to demand in the name of their secretary the said sum of 100*l.*, yet the defendants have not paid the same, to the damage of the said committee of 10*l.*, and thereupon the plaintiff, by virtue of the said act, brings suit.

Directions for using the above Form.

Substitute for A. B. the name of the secretary, and for C. D. the name of his attorney, and for X. Y. the name of the company defendant, and for the sums such sums as the case may require, and add the venue. Several counts may be inserted on the above model where several sums are sought to be recovered.

13 & 14 VICT. CAP. 83.

An Act to facilitate the Abandonment of Railways, and the Dissolution of Railway Companies, in certain Cases. [14th August, 1850.]

Whereas divers joint stock companies have been incorporated by act of Parliament for making railways, and it has been found that such railways, or certain parts thereof, cannot be made or carried on with advantage either to the promoters thereof or to the public, and it is expedient therefore that facilities should be given for the abandonment of such railways or parts of railways, and for the dissolution of such companies, or some of them, and winding up the concerns thereof; Be it therefore enacted, That if any company authorized by act of Parliament heretofore passed to make a railway desire that the making and carrying on of such railway or some part thereof, whether commenced or not, be abandoned, such company may, by the authority and with the consent of the holders of three-fifths of the shares or stock of such company, represented in manner hereinafter mentioned at a general meeting of shareholders to be convened in manner hereinafter mentioned, make application in writing to the commissioners of railways (*i*), setting forth the particulars of the railway or portion of the railway desired to be abandoned by them, and the grounds upon which such application is made.

Railway company may make application to commissioners of railways to be allowed to abandon their undertaking.

II. That it shall be lawful for the directors of any such railway company at any time to call a meeting of the shareholders thereof for the purpose of determining whether such application shall be made to the commissioners of railways, and so from time to time as they shall see fit.

Directors may call meeting to consider such application.

(*i*) This application must now be made to the Board of Trade; and see the provisions of this statute abstracted, ante, text, 450.

APPENDIX.

Shareholders may require directors to call meeting.

III. That it shall be lawful for any number of shareholders of any such company, not being less than five, and holding in the aggregate not less than one-twentieth of the capital or stock of the company, consisting of shares or stock whereon all calls for the time being have been paid up, but exclusive of any shares or stock held by or in the names of the directors of the company or any of them, or by or in the name of any person in trust for the directors or any of them, or for the company, and which shareholders shall have paid all the calls then due on the shares held by them, by writing under their hands to require the directors of such company to call a meeting for the purpose aforesaid; and upon the receipt of any such requisition such directors shall forthwith proceed to call a meeting of the shareholders of such company on a day to be named by them, not being less than fourteen nor more than twenty-eight days after the receipt of such requisition: Provided always, on the default of the directors to call and advertise such meeting within fourteen days after the receipt of the requisition, it shall be lawful for the requisitionists to call such meeting themselves, at a time and place to be appointed by them, of which fourteen days' notice shall be given by them by advertisement as hereinafter provided: Provided also, that when any meeting of any such company shall have been called pursuant to any such requisition as aforesaid, the directors of such company shall not be required to call any further meeting of such company upon any further requisition for the like object until twelve months shall have elapsed since the holding of such previous meeting.

After receipt of requisition, directors not to make any payments, except under existing liabilities, nor to enter into new contracts, nor to make new calls.

IV. That after any such meeting has been called by the directors, or after the receipt of any such requisition as aforesaid, it shall not be lawful for the directors to make any payments out of the monies of the company for the purposes of the railway proposed to be abandoned, except in discharge of *bonâ fide* debts or liabilities, or in performance of contracts or engagements previously entered into, and in payment of the expenses of calling and holding such meeting, nor to enter into any contracts or engagements on behalf of the company with respect to the railway so proposed to be abandoned, nor to make any calls, nor to register the transfer of any shares, until the meeting called as aforesaid shall have determined whether such application shall be made.

Mode of calling meeting, and signifying the consent of the shareholders to the application.

V. That the calling of any such meeting shall be by public advertisement in the manner required or usually adopted for advertising the extraordinary general meetings of such company, and where such meeting is called by the directors of the company a circular letter shall be sent by the post addressed to each of the registered shareholders of such company, according to his registered address or known address, seven clear days at least before the holding of such meeting, and stating that a general meeting of the shareholders of such company will be held at a time and place mentioned in such circular for the purpose of determining whether application shall be made to the commissioners of railways that such railway or the part thereof specified in such notice may be abandoned, and requesting such shareholder to signify his assent to or dissent therefrom, which may be according to a form to be contained in such circular letter, which form shall be to the effect set forth in the schedule hereto, and such circular letter shall request such shareholder either to return such form, signed by him, in a letter addressed to the secretary of such company, or to attend such general meeting as aforesaid, and deliver the same, so signed by him, to the chairman thereof; and in the case of every such meeting, whether called by the directors or by such requisitionists as aforesaid, the shareholders may signify their assent to or dissent from the proposed application, either by attending such meeting in person or by letter addressed to the secretary of the company, stating the assent or dissent of such shareholders, in a form which shall be to the effect of the form set forth in the schedule hereto, and signed by such shareholders respectively.

The number of the shareholders assenting or dissenting to be ascertained by scrutineers, and reported to the chairman.

VI. That at the meeting so to be called as aforesaid the scrutineers to be appointed as hereinafter mentioned shall cast up the amount of shares held by shareholders assenting to the making of such application, and the amount of shares held by shareholders dissenting therefrom, whether such assent or dissent have been signified by the shareholders sending to the secretary of the company such form as aforesaid, signed by him, or by such shareholder attending such meeting, and delivering in the same to the chairman thereof, and such scrutineers shall report to the chairman the amount of shares of the shareholders assenting to such application, and the amount of the shares of those dissenting therefrom, and the said chairman shall thereupon publicly announce to the meeting the said amounts respectively, and shall state whether or not the holders of three-fifths of the whole of such shares represented in manner aforesaid at the meeting consent to such application: Provided always, that in computing the amount of shares of the shareholders assenting or dissenting as aforesaid no share shall be taken into account the holder whereof shall not have been duly registered, or who shall not have paid all the calls then due by him upon all the shares held by him, unless such calls shall have been made within three months prior to the holding of such meeting, or if such meeting be held pursuant to a requisition of shareholders as hereinbefore provided, then three months prior to the day on which such requisition was presented to the directors.

Chairman of the meeting.

VII. That the chairman of the directors of such company, if present, or in his absence the deputy chairman, if any, of such directors shall be the chairman of such meeting as aforesaid, or if neither such chairman nor deputy chairman of the directors be present, any shareholder chosen for that purpose by a majority of the shareholders present at the meeting shall be the chairman thereof.

VIII. That at every such meeting the shareholders present thereat shall elect three shareholders of the company to be scrutineers for the purposes aforesaid, and in electing such scrutineers each shareholder shall have one vote only, and shall vote for one scrutineer only; and the decision of such scrutineers, or of any two of them, upon any of the matters hereby intrusted to them, shall be final in all respects.

IX. That for the purpose of receiving the report of the said scrutineers the chairman of such meeting may, if he think fit, on the application of any one of such scrutineers, and he shall, if required by more than one of such scrutineers, adjourn such meeting to some time to be appointed by him, not less than one clear day nor more than seven clear days from the day of holding such meeting.

X. That a certificate under the hand of the chairman of the meeting, stating that such meeting as aforesaid has been duly held, and such consent given as aforesaid in cases where the same is given, shall within one week after the day of holding such meeting be deposited in the office of the said commissioners of railways.

XI. Provided always, and be it enacted, That if it appear to any of the shareholders of any such company who shall have signed any such requisition, or been present at any such meeting as aforesaid at which the proposal to apply to the said commissioners to authorize the abandonment of the whole or part of a railway shall have been negatived or alleged to be negatived, either that such meeting was not duly called, or that the sense thereof was not duly taken according to the true intent and meaning of this act, and that if such meeting had been duly called, and the sense thereof duly taken, the consent of such meeting to the proposed application would have been given, it shall be lawful for any such shareholders, not being less in number than five, and holding in the aggregate not less than one-twentieth of the capital or stock of the company, consisting of shares or stock whereon all calls for the time being have been paid up, and which shareholders shall have paid all the calls then due on the shares held by them, to apply to the said commissioners, setting forth in writing the grounds on which they complain of the decision alleged to have been come to at such meeting as aforesaid, and praying that a further meeting may be called, and if it appear to the said commissioners (after hearing the parties complained of, if they desire to be heard,) that there is good reason to believe that if such meeting had been duly called, and the sense thereof duly taken, the consent of such meeting to the proposed application to the said commissioners would have been given, the said commissioners shall certify their judgment to that effect, and shall direct a further meeting to be called by the directors of such company at the time and place to be appointed by the said commissioners, and the said directors shall call such meeting accordingly, or in default thereof it shall be lawful for the shareholders who complained to the said commissioners of the proceedings of the former meeting to call such meeting, and all the provisions of this act shall apply to any further meeting so directed to be called in like manner as to any original meeting hereinbefore authorized or required to be called.

XII. That if at any such meeting any railway company shall determine, as hereinbefore mentioned, that such application as aforesaid shall be made, or if the said commissioners shall certify as aforesaid their judgment, that if such meeting had been duly called and the sense thereof duly taken the consent of such meeting to the proposed application to the said commissioners would have been given, then, as from the date of the resolution so come to at such meeting, or the date of the said certificate, as the case may be, the directors of such company shall not have power to proceed any further with the making of the railway, or the part thereof so proposed to be abandoned, until the decision of the commissioners of railways with respect to such application be made, and then only in accordance with such decision.

XIII. That if it appear to the said commissioners that there are sufficient grounds for entertaining such application, the said commissioners shall require and direct the company making the same to give notice of such application having been made, by advertisement inserted, in a form to be approved of by the said commissioners, once in the London, Edinburgh, or Dublin Gazette, according as the railway or part of the railway proposed to be abandoned is situate in England, Scotland, or Ireland, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part proposed to be abandoned of such railway is situated, and affixed for three successive Sundays on the principal outer door of the church or churches of every parish in which any part of such railway where the whole is proposed to be abandoned, or in which any part proposed to be abandoned, is situate, and in Ireland such notice shall also be affixed to the Roman Catholic Chapel, and where there shall be no such church or chapel on some public or conspicuous place of such parish; and every such notice shall set forth within what time and in what manner any person who thinks himself aggrieved by any such proposed abandonment, and who desires to object thereto, may bring such objection before the commissioners.

XIV. That, for the purpose of ascertaining the state and condition of the company making any such application, and of inquiring into the expediency of the proposed abandonment of railway, and of determining the terms and conditions on which the same may be authorized by them, it shall be lawful for the commissioners of railways, by themselves or by any officers appointed and specially empowered by them for that purpose, to inspect

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Meeting to elect scrutineers.

Adjournment of meeting on application of scrutineers.

Certificate of the chairman to be evidence.

Shareholders desiring abandonment, and complaining that the sense of the company has not been fairly ascertained, may apply to the commissioners.

If meeting determine that application shall be made directors not to proceed meanwhile.

Commissioners of railways to direct advertisements of application.

Commissioners to have power to inspect the company's books and other documents and to send an

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officer for local inspection.

Commissioners may by warrant authorize abandonment of the railway or part of railway described in the warrant.

In considering objections of shareholders to partial abandonment, commissioners to have regard to local circumstances. Power to reduce or cancel the shares of the objectors in certain cases.

Abandonment of railway to be advertised and demands on the company for compensation to be sent in.

Commissioners to certify the due publication of the notice of the warrant.

After the granting of warrant the company to be released from liability to make the railway.

the books of accounts, minutes of proceedings, or any other books, papers or documents in the possession or control of such company, and also, if they see fit so to do, to send, at the expense of such railway company, or at the expense of any person who applies to them for that purpose, an officer to be appointed by them to inspect the railway or proposed railway or work so proposed to be abandoned, and to collect evidence on the spot relative to such abandonment; and if any such company, or any of their officers or servants, shall refuse such inspection by the said commissioners, or any officer appointed and specially empowered by them for that purpose, or refuse or wilfully neglect to produce to the said commissioners or any such officer, on demand, any books, papers or documents in the possession or control of such company, every such company shall, for every such refusal or neglect, forfeit to her Majesty the sum of twenty pounds, and a further sum of five pounds for every day during which such refusal or wilful neglect shall be continued.

XV. That upon proof to the satisfaction of the said commissioners that such notice has been duly given, and after the expiration of the time therein appointed for bringing objections before the said commissioners, and after considering all the objections, if any, brought before them, the said commissioners may, if they think fit, and upon such terms and conditions as they think fit, by warrant under their seal, and signed by two or more of the said commissioners, authorize the abandonment of the railway or portion of railway described in such warrant.

XVI. Provided always, and be it enacted, That in considering the objections which may be made by any of the shareholders of any railway company to the proposed abandonment of a part only of the railway of such company, and in determining the terms and conditions on which the said commissioners may think fit to authorize any such partial abandonment, the said commissioners shall have regard to the local situation of the lands and residences of the shareholders so objecting with reference to the portion of railway proposed to be abandoned; and in the case of any such shareholders being original subscribers in the undertaking, and not being solicitors, agents or engineers employed in promoting the same, and whose places of residence or lands are adjoining or near the line of the portion of railway so proposed to be abandoned, it shall be lawful for the said commissioners, if they think fit so to do, in any direction which (under the provision hereinafter contained) they may give for reducing the capital of the company authorized to construct such railway, to provide, at the request of any such last-mentioned shareholders, that the nominal amount of the shares held by them in such company may be reduced to the amount then already paid up by them respectively, or to such other extent as the said commissioners may think fit to order in that behalf, or the said commissioners may, at the like request, direct any such shares to be cancelled, and a part of the monies that may have been paid up in respect of such shares, bearing such proportion to the whole as the said commissioners having regard to all the circumstances of the case shall think fit to determine, to be repaid to such shareholders.

XVII. That within one month after the day on which any such warrant as aforesaid is granted by the said commissioners the railway company to which the same applies shall cause notice thereof to be inserted in the London, Edinburgh or Dublin Gazette, according as the railway or part of railway mentioned therein is situated in England, Scotland or Ireland, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part of such abandoned railway is situate, and to be affixed for three successive Sundays on the principal outer door of the church or churches of every parish in which any such part of such railway is situate, and in Ireland such notice shall also be affixed to the Roman Catholic Chapel, and where there shall be no such church or chapel, on some public or conspicuous place of such parish; and every such notice shall require all persons having any claims or demands upon the said company for compensation or otherwise, by reason of the abandonment of railway authorized by such warrant, to transmit the statement of such claims or demands to the secretary of such company, at the office or usual place of business of the same company within four months from the date of such warrant.

XVIII. That upon proof to the satisfaction of the said commissioners that notice of such warrant has been duly published in manner hereinbefore required, the said commissioners shall certify the same accordingly; and such certificate shall be received in all courts of justice or elsewhere as evidence that such notice was duly published as aforesaid.

XIX. That after the granting of any such warrant, and the publication of such notice thereof as aforesaid, the company shall (subject to the provisions hereinafter contained) be released from all liability to make, maintain or work the railway mentioned in such warrant, or the part thereof thereby authorized to be abandoned, or to purchase any of the lands required for the making thereof, or to complete the purchase of any such lands for the purchase of which notice may have been given, or any contract entered into, by or on behalf of the company, or to complete any contract for or concerning the making, maintaining or working of the railway so to be abandoned, or any other contract relating to the railway or part of railway so authorized to be abandoned which by reason of such abandonment cannot be performed: Provided always, that nothing in this act contained shall extend to release the company from any liability to complete the purchase of any land for the purchase of which any contract may have been entered into by or on behalf of the com-

pany, and which contract may have been in part performed, or by virtue or in pursuance of which a specified sum or price as the consideration for the purchase of the lands thereby agreed to be sold to or taken by the company shall have been fixed or ascertained previously to the passing of this act, notwithstanding the time for the completion of the purchase named in such contract shall have been subsequently extended by agreement or arrangement with the company.

XX. Provided always, and be it enacted, That in every case in which before the granting of any such warrant any notice hath been given or contract entered into by or on behalf of the company named therein for purchasing any lands which such company were by the acts relating thereto empowered to purchase for the purpose of constructing the railway or portion of railway so authorized to be abandoned, and from which contract such company would be relieved under the provisions hereinbefore contained, or where any contract had been entered into for or concerning the constructing, maintaining or working of the railway or part of railway so authorized to be abandoned, or any other contract relating thereto, which by reason of such abandonment cannot be performed, the company shall make to the owners or occupiers of and other parties interested in such lands, or being parties to such contracts as aforesaid, compensation, to be determined by arbitration as hereinafter mentioned, for all injury or damage, if any, sustained by such owners, occupiers, and other parties by reason of such purchase not being completed pursuant to such notice, or by reason of such contract not being performed.

XXI. That where any railway or part of a railway so authorized to be abandoned shall have been then made or commenced, such company shall make to the owners and occupiers of the lands adjoining the railway or part of a railway so commenced or made, and authorized to be abandoned, compensation, to be determined by arbitration as hereinafter mentioned, for all such injury or damage, if any, as shall be sustained by such owners or occupiers by reason of the omission to make gates, passages, drains, watercourses, bridges, and such other works, for the accommodation of lands adjoining the railway, as such company would have been required to make if such railway had not been allowed to be abandoned.

XXII. That where the line of any railway so authorized to be abandoned shall have been wholly or partially laid out, and any road shall have been carried across such line of railway by means of a bridge or tunnel over or under such railway, which bridge or tunnel the company to whom such railway belonged would, in case the same had not been abandoned, have been liable to keep in repair, then in every such case, except where such bridge or tunnel shall, with the permission of the said commissioners, be by such company removed, and such road restored to the like or an equally convenient and good state as the same was in before it was interfered with by the makers of such railway, to the satisfaction (in case of difference between such company and the owner or persons having the management of such road) of the commissioners of railways, such company shall pay to the owner of such road, if it be a private road, or to the trustees, surveyors of highways, or other persons having the management of such road, if it be a turnpike or other public road, a sum of money, to be determined by arbitration as after mentioned, in lieu and discharge of their liability to keep such bridge or tunnel, and also the roadway over the same, in repair.

XXIII. That every sum so to be paid as last aforesaid to such trustees, surveyors, or other persons as aforesaid shall be by them forthwith paid over to the treasurer of the county where the bridge or tunnel in respect of which such sum was paid is situate, and shall be by him invested in consolidated bank annuities or other public securities, and the dividends or income thereof shall, until parliament shall otherwise provide, be applied in the maintenance of the bridge or tunnel in respect whereof the same was paid, in such manner as the justices in quarter sessions having jurisdiction where such bridge or tunnel is situate shall order.

XXIV. That every sum so to be paid as last aforesaid in Scotland to such trustees or other persons as aforesaid shall be by them paid into bank, and the interest to arise thereon shall, until parliament shall otherwise provide, be applied in the maintenance of the bridge or tunnel in respect whereof the same was paid, in such manner as the sheriff of the county in which such bridge or tunnel is situate, in case of any difficulty arising, shall direct.

XXV. That the amount of the compensation so to be made in the several cases aforesaid shall be determined, in case of difference, by arbitration, in the manner provided by the Railways Clauses Consolidation Act, 1845 (*k*), or the Railways Clauses Consolidation Act, Scotland, 1845, as the case may require, and for that purpose all the clauses of the said Railways Clauses Consolidation Acts with respect to the settlement of disputes by arbitration shall be deemed to be incorporated with this act: Provided always, that no such railway company shall be liable to make any compensation in respect of damage alleged to have been sustained by reason of the abandonment of the railway or part of the railway, or the non-completion of any contract of such company in any of the cases aforesaid, unless the claim for such compensation shall have been made within six months after the

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Compensation to be made where contracts have been entered into or notice given.

Compensation to adjoining land-owners in lieu of accommodation works.

Where roads have been carried across abandoned line of railway by bridge or tunnel, company to make compensation, in lieu of keeping bridges, &c., in repair, except where the road is restored to its former state.

Compensation to trustees and overseers of public roads, how to be applied.

Application of monies paid.

Compensation to be settled by arbitration, pursuant to 8 & 9 Vict. c. 20, and 8 & 9 Vict. c. 33.

Claims to be made within six months after publication of warrant for abandonment.

(*k*) Ante, p. 73.

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Company liable for damage occasioned by their entry on lands for taking levels, &c. pursuant to 8 & 9 Vict. c. 18, s. 84 (a), or 8 & 9 Vict. c. 19.

Lands purchased by the railway company to be sold within a limited time.

Where part of a railway is authorized to be abandoned, the commissioners may require the capital to be reduced.

After warrant for abandonment of the whole railway the powers of the company are to cease, except for winding up.

Provisions of 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108, to apply to cases where order of winding up was made prior to passing of said acts.

When warrant has been granted for abandoning the whole railway shareholders may petition for

publication in the Gazette of the notice of the warrant for such abandonment as hereinbefore provided.

XXVI. Provided also, and be it enacted, That the authority so as aforesaid given for abandoning the making of any such railway or part of a railway shall not prejudice or affect the right of the owner or occupier of any lands to receive from such company compensation for any damage that may have been occasioned by the entry of such company upon such lands, for the purpose of surveying and taking levels, and of probing or boring to ascertain the nature of the soil, or of setting out the line of the railway, pursuant to the provisions for that purpose in the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Act (Scotland), 1845, contained.

XXVII. That all the lands acquired by such company for the purposes of the railway or part of railway so authorized to be abandoned shall be sold by such company within the time limited or prescribed for that purpose in the warrant authorizing the abandonment of such railway, and if no time be therein prescribed for that purpose, then within two years from the date of such warrant, in the manner prescribed by the said Lands Clauses Consolidation Acts with respect to the sale of superfluous lands (b); and for that purpose all the clauses of the said last-mentioned acts with respect to the lands acquired by the promoters of the undertaking under the provisions of their special act, but which are not required for the purposes thereof, shall be deemed to be incorporated with this act: Provided always, that the offer to be made by the railway company pursuant to the said acts to sell such lands to the person entitled to the lands from which the same were severed shall be made at a price or sum not greater than the price or sum at which such lands were purchased by such company.

XXVIII. That when the said commissioners of railways, by any such warrant as aforesaid, authorize the abandonment of a part only of the railway of any railway company, they may, if they think fit, require that the capital authorized to be raised by such company in respect of such railway shall be reduced to such extent and in such manner as the said commissioners think fit, and so that such reduction do not bear a greater proportion to the whole capital so authorized to be raised than the cost of the part of the railway so authorized to be abandoned would have borne to the cost of the whole railway; and they may also, if they think fit, in like manner reduce the amount which such company are authorized to borrow on mortgage or bond, and every such reduction shall be expressed in the said warrant; and in every such case the capital of such company, and their power of borrowing money shall be reduced and limited in conformity with the directions for that purpose contained in such warrant; and such company shall have all the same powers for enforcing the payment of calls in respect of the shares in the capital when reduced in the manner required by the said commissioners, and for enforcing the forfeiture of any such shares in default of payment of such calls, as such company would have had in respect of the original capital of such company if this act had not been passed: Provided always, that nothing herein contained shall authorize the said company to reduce or interfere with any amount of capital paid up or called for before the eleventh day of February, 1850, and entitled to any preferential or guaranteed dividend or interest.

XXIX. That after the granting of any such warrant as aforesaid for the abandonment of the whole railway of any railway company the powers of such company for the construction, maintenance and management of such railway shall cease, and such company shall continue to exist only for the purpose of winding up their affairs, and they shall accordingly, subject to the provisions herein contained with respect to the sale of lands acquired by such company for the purposes of their railway, proceed with all convenient speed to collect and to convert into money all their property and effects, and shall in the first place pay and satisfy all their debts and liabilities, and after full payment and satisfaction thereof shall distribute the surplus funds among the shareholders of the company in proportion to their shares and interests therein, and for the purposes aforesaid all the powers of such company shall continue in full force and effect; and when and so soon as the same shall have been fully accomplished such company shall be dissolved, and cease to exist.

XXX. That notwithstanding the provision in the Joint Stock Companies Winding-up Amendment Act, 1849, excepting railway companies incorporated by act of parliament from the application of the Joint Stock Companies Winding-up Act, 1848, the said two several acts shall nevertheless apply to any railway company incorporated by act of parliament in respect of which an order may have been made by the Court of Chancery for winding up the affairs of such company previous to the passing of the said Joint Stock Companies Winding-up Amendment Act, 1849, and the proceedings for winding up the same shall proceed and be carried on under the said Joint Stock Companies Winding-up Act, 1848, and the said Joint Stock Companies Winding-up Amendment Act, 1849, or either of them.

XXXI. That where any such warrant as aforesaid shall have been granted for the abandonment of the whole railway of any railway company in England or Ireland, any shareholder of such company may present a petition under the Joint Stock Companies Winding-up Act, 1848, or any act for the amendment of such act, for the winding up of

(a) Ante, p. 60.

(b) Ante, p. 68.

the affairs of such company under the said act, and for that purpose the railway company whose railway is so authorized to be abandoned shall, if the court shall think fit so to order, (notwithstanding anything to the contrary thereof in the said Joint Stock Companies Winding-up Act, or in the Joint Stock Companies Winding-up Amendment Act, 1849,) be deemed to be a company to which the said act applies.

XXXII. That where any such warrant as aforesaid shall have been granted for the abandonment of the whole railway of any railway company in Scotland, any shareholder of such company may present a petition to the court of session, praying the said court to sequester such company, and it shall thereupon be lawful for the said court to issue a deliverance awarding sequestration of such company, and to appoint a factor, who shall take possession of and recover the estate of such company, and realise and manage the same, for the purposes of this act, and for winding-up and distributing the same, with due regard to the rights and interests of the creditors and shareholders, and of all others concerned therein.

XXXIII. That it shall be competent to the said court to establish, by acts of sederunt to be passed by them, all such rules and regulations as may be necessary in relation to the summary statement, discussion and adjudication of all claims at the instance of creditors, shareholders and other parties against such company, and by such rules and regulations to apply, as far as may be practicable and expedient, towards the purposes of this act, the provisions of an act passed in the session of parliament holden in the second and third years of the reign of her present Majesty, intituled "An Act for regulating the Sequestration of the Estates of Bankrupts in Scotland;" and it shall be competent to the said court so also to establish all such other rules and regulations as may be necessary for carrying fully into effect the purposes of this act.

XXXIV. That in the event of the affairs of any such company being wound up under any such petition, the compensation hereinbefore directed to be given to the owners and occupiers of lands and others in respect of the damage sustained by them by reason of such abandonment in the cases hereinbefore mentioned, or by reason of the non-completion of any such contract as aforesaid, or otherwise, shall be deemed a demand claimed from and when ascertained in the manner provided by this act, a debt due from such company, and the party by whom such compensation is claimed shall be deemed a "creditor" in England or Ireland, within the provisions of the said Joint Stock Companies Winding-up Act, or, in Scotland, within the provisions of the said recited act of the second and third years of the reign of her present Majesty; and in case any lands purchased by such railway company shall be sold by the official manager under the said act, they shall be sold in the manner and subject to the provisions contained in this act.

XXXV. Provided always, and be it enacted, That this act, or any proceeding thereunder, shall not prejudice or affect any action or suit or other proceeding at law or in equity commenced before the eleventh day of February, 1850, or any action or suit brought in connection with and during the dependence of and involving the same matter with such action or suit, nor any action, suit or other proceeding against a company which shall not have obtained a warrant authorizing the abandonment of the railway or part of a railway in respect of which such action, suit or other proceeding shall be instituted, unless such company shall, within three days after notice for that purpose from the party suing them, give such party notice of their intention to apply for such warrant, and shall obtain the same and serve notice thereof on such party within three calendar months thereafter, but all such actions and suits and other proceedings shall be proceeded with, and judgments recovered, and rules, orders and decrees made therein shall be enforced, as if this act had not been passed, save only that the same, after notice given by the company of their intention to abandon as aforesaid, shall be suspended for three calendar months, if the warrant be refused, or be not obtained, within that time.

XXXVI. Provided always, and be it enacted, That nothing in this act contained shall extend or be construed to extend to authorize the abandonment by any company of any railway or portion of a railway, or other works, which such company has agreed under its corporate seal to make and construct, according to any agreement entered into either with any individual or with any other company, unless such individual or company shall consent in writing to such abandonment.

XXXVII. That in each case in which the said commissioners authorize the abandonment of the whole or a portion of a railway, they shall, within ten days after issuing their warrant for that purpose, if Parliament be then sitting, or if not, then as soon thereafter as Parliament meets, lay before both houses of Parliament a copy of every such warrant, accompanied by such report and observations as shall in the judgment of such commissioners set forth and explain the reasons for their award and warrant in every such case as aforesaid.

XXXVIII. That the following words and expressions in this act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number:

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winding up, under 11 & 12 Vict. c. 45, notwithstanding 12 & 13 Vict. c. 108.

Court of session, upon petition, may sequester any railway company for the abandonment of which a warrant has been granted.

Court of session to establish rules for adjustment of claims.

2 & 3 Vict. c. 41.

In case of petition for winding up, landowners are to be deemed creditors in respect of the compensation given by this act.

Act not to affect actions or suits commenced before 11th Feb. 1850.

Nothing herein to authorize abandonment of any railway agreed to be constructed without consent.

Commissioners to report to Parliament where abandonment authorized by them.

Interpretation of terms.

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Words importing the masculine gender shall extend to females :

The word "person" shall include body corporate :

The word "lands" shall include messuages, tenements and hereditaments :

The word "railway" shall include all works, buildings and undertakings authorized to be constructed or carried on in connection with the railway or belonging thereto :

The word "shares" shall include stock :

The word "month" shall mean calendar month.

Short title.

XXXIX. That in citing this act in other acts of Parliament, and in legal and other instruments and proceedings, it shall be sufficient to use the expression "The Abandonment of Railways Act, 1850."

SCHEDULE referred to by the foregoing Act.

(1.) Name of Railway.	(1.) Name of Shareholder.	(1.) No. and Amount. of Shares or Stock held by him.	(2.) Whether assenting or dissenting.

(1.) The secretary will insert these particulars.

(2.) In this column the shareholder will write the word "assenting" or "dissenting," as the case may be, and sign his name thereunder.

14 & 15 VICT. CAP. 49.

An Act to repeal an Act of the Eleventh and Twelfth Years of her present Majesty, for making preliminary Inquiries in certain Cases of Applications for Local Acts, and to make other Provisions in lieu thereof. [1st August, 1851.]

11 & 12 Vict. c.
129,

Whereas an act was passed in the session of Parliament holden in the eleventh and twelfth years of the reign of her present Majesty, chapter one hundred and twenty-nine: and whereas it is expedient to repeal the said act, and make other provisions in lieu thereof: be it therefore enacted by (&c., &c.):

repealed.

I. That in respect of all future applications to Parliament for local acts the said recited act shall be and the same is hereby repealed.

Where works
proposed on tidal
lands, admiralty
may require
statements, &c.

II. Whenever application shall be made to Parliament for a bill whereby power is sought to construct any works on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, or to construct any bridge, viaduct or other work across any creek, bay, arm of the sea or navigable river, or to construct any work affecting the navigation of any harbour, port, tidal water or navigable river, it shall be lawful for the lord high admiral, or for the lords commissioners for executing the office of lord high admiral, to require the promoters of such bill to deposit at the office of the admiralty, in addition to the plans, sections or other documents which may have been deposited at such office in compliance with the standing orders of either house of Parliament(c), all such statements and other documents as the said lord high admiral or lords commissioners shall deem necessary, to explain the objects of the intended application to Parliament, and the proposed interference with such tidal lands or navigation, as the case may be.

Admiralty may
appoint inspec-
tors.

III. It shall be lawful for the said lord high admiral or lords commissioners, if they shall consider the same necessary or expedient, but not otherwise, to appoint a competent person or persons to be an inspector or inspectors, for the purpose of inquiring, in such manner and at such time and place as they shall direct, into all such matters as they shall deem necessary to enable them to report to Parliament their opinion upon every such bill touching the jurisdiction or authority of the lord high admiral.

Inspectors may
summon wit-
nesses,

IV. For the purposes of such inquiry the said inspector or inspectors may, by summons under his or their hands, summon before him or them any person having the custody

(c) See ante, text, 13.

of any map, survey or book made or kept in pursuance of any act of Parliament, to produce such map, survey or book for his or their inspection, and the said inspector or inspectors may summon, in manner aforesaid, any other person whose evidence shall, in the judgment of the said inspector or inspectors, be material to his or their inquiries, and pay or allow to every such person so summoned by him or them the reasonable charges of his attendance; and the said inspector or inspectors shall also have power to administer an oath to all persons who may be examined by him or them touching the premises.

V. Any person, being summoned by such inspector or inspectors, who, after the delivery to him of such summons as aforesaid, or of a copy thereof, shall wilfully neglect or refuse to attend in pursuance of such summons, or to produce such maps, surveys, books or other documents as he may be required to produce under the provisions hereinbefore contained, or to answer upon oath or otherwise such questions as may be put to him by such inspector or inspectors under the powers herein contained, shall be liable to forfeit and pay a penalty not exceeding five pounds, which may be recovered before any two or more justices having jurisdiction within the town, district or place wherein such inquiry shall be held; and on conviction of the offender, and in default of payment of any such penalty, such justices shall be empowered and required to cause the same to be levied by distress and sale of the goods and chattels of the offender, by warrant under their hands and seals; and such penalty shall be paid to the treasurer of the county within which such conviction shall take place in aid of the county rate; provided that no person, other than the promoters of the proposed act, or their agents, shall be required to attend in obedience to any summons, unless the reasonable charges of his attendance be paid or tendered to him, nor to travel in obedience thereto more than ten miles from his usual place of abode.

VI. Before instituting any such inquiry, the said lord high admiral or lords commissioners may, if they think fit, require and take such security for the payment of the whole or any part of the costs, charges, and expenses to be incurred by them in respect of such inquiry (including the remuneration of the inspectors) as to them shall seem fit; and whenever any such security is given, the costs, charges, and expenses in respect whereof it is given, shall, to such amount as shall be certified by the said lord high admiral or lords commissioners (not exceeding the extent or amount of such security), be a debt due to her Majesty from the person or persons respectively by whom the same is entered into.

VII. The persons whose names shall be subscribed to the petition for any private bill shall be deemed to be promoters of such bill for all the purposes of this act, notwithstanding the persons subscribing such petition shall have signed for or on behalf of any other party.

VIII. In citing this act in other acts of parliament, and in legal and other instruments, it shall be sufficient to use the expression, "The Preliminary Inquiries Act, 1851."

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and examine them upon oath.
Penalty for non-attendance or refusing to answer questions.

Admiralty may take security for payment of expenses of inquiry.

Petitioners for bill to be deemed the promoters.

Short title.

14 & 15 VICT. CAP. 64.

An Act to repeal the Act for constituting Commissioners of Railways (d).

[7th August, 1851.]

Whereas an act was passed in the session holden in the ninth and tenth years of her Majesty (chapter one hundred and five), for constituting commissioners of railways: and whereas it is expedient that the said act should be repealed, and provision be made for the exercise and performance of the powers and duties which since the passing of the said act have been vested in or imposed on the said commissioners: be it enacted by (&c., &c.):

I. From and after 10th October, 1851, the said act shall be repealed, and all powers, rights, authorities and duties vested in or exercised or performed by the commissioners of railways under any act passed since the passing of the said recited act, or which may be passed during the present session of Parliament, shall be transferred to and vested in and performed by the Lords of the Committee of her Majesty's Privy Council for Trade and Foreign Plantations as if they had been named in such acts instead of the said commissioners; and all proceedings pending before the said commissioners on the said tenth of October, or carried on under their authority, shall be continued and carried on by and before the lords of the said committee, who shall have, exercise, and perform the same powers, rights, authorities, and duties in respect of all such proceedings as might have been exercised or performed by such commissioners in case this act had not been passed.

II. It shall be lawful for the lords of the said committee, with the approval of the commissioners of her Majesty's treasury, to continue, for the transaction of the business transferred to the lords of the said committee under this act, all or any of the officers and

9 & 10 Vict. c. 105.

Recited act repealed, and powers, &c. of commissioners of railways under subsequent acts transferred to Board of Trade.

Power to continue officers appointed by commissioners of railways.

(d) See ante, 431, text, note (f), as to the construction of this act. This act was made applicable to railway companies incorporated by certificate of the Board of Trade

under "The Railways Construction Facilities Act, 1864," by that act, 27 & 28 Vict. c. 121, post.

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Appointments,
orders, &c. of the
Board of Trade
how to be signi-
fied.

servants appointed by the said commissioners of railways, and from time to time, with such approval, to remove such officers and servants, or any of them.

III. Where by an act relating to railways or to any railway the commissioners of railways or the lords of the said committee are empowered or required to make or issue any appointment, authority, determination, order, requisition, regulation, certificate, or notice, or to do any other act, the lords of the said committee may, after the said tenth of October, signify such appointment, authority, determination, order, requisition, regulation, certificate, notice, or other act by a written or printed document, signed by one of the joint secretaries of the lords of the said committee, or by some assistant secretary, or other officer appointed by them to sign documents relating to railways; and every appointment, authority, determination, order, requisition, regulation, certificate, notice, or other act, signified by a written or printed document purporting to be so signed as aforesaid, shall be deemed to have been duly made, issued, or done by the lords of the said committee; and every such document shall be received in evidence in all courts and before all justices and others, without proof of the authority or signature of such secretary or other officer, or other proof whatsoever, until it be shown that such document was not signed by the authority of the lords of the said committee.

14 & 15 VICT. CAP. 70.

An Act to alter and amend certain Provisions of the Lands Clauses Consolidation Act, 1845 (e), so far as relates to Ireland. [7th August, 1851.]

Whereas, on account of circumstances connected with the tenure of land in Ireland; the provisions of the Lands Clauses Consolidation Act, 1845, are found to be unsuited to the existing condition of that country, and it is expedient that some provision should be made for ascertaining the purchase money or compensation to be paid by railway companies in Ireland for the lands required for their undertakings, and for determining differences with respect to the works to be made and maintained by such companies for the accommodation of the owners and occupiers of lands adjoining such railways: be it therefore enacted by (&c., &c.):

Short title.

I. In citing this act in other acts of Parliament, legal instruments, proceedings at law or in equity, and all other instruments and proceedings whatsoever, it shall be sufficient to use the expression "The Railways Act (Ireland), 1851."

Act to apply to
railways in Ire-
land now and
heretofore autho-
rized, except
13 & 14 Vict. c.
xxix,

13 & 14 Vict. c.
xlv,

13 & 14 Vict. c.
lxxvi,

13 & 14 Vict. c.
lxxxviii,

14 & 15 Vict. c. cx,

14 & 15 Vict. c.
ciii.

Certain provisions
of 8 & 9 Vict. c.
18, not to apply
to this act.

Company to
deliver maps,
schedules, and
estimates at the
office of commis-
sioners of public
works, and de-
posit copies with
clerks of the peace
and clerks of
unions.

II. This act shall apply to every railway in Ireland authorized to be made by any act passed in this session of parliament, or which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such railway, and also to every railway or portion of a railway in Ireland by any act heretofore passed authorized to be made in relation to which the compulsory powers for taking lands are still in force, and this act shall be incorporated with and form part of the acts authorizing the said undertakings: provided always, that this act shall not apply to the railways authorized to be made by "The Waterford and Limerick Railway Amendment Act, 1850," "The Dublin and Drogheda Railway Act, 1850," "The Dundalk and Enniskillen Railway Act, 1850," and "The Midland Great Western Railway of Ireland (Deviation and Amendment) Act, 1850," "The Waterford and Limerick Railway Deviation Act, 1851," and "The Killybeg Junction Railway Act, 1851," "The Longford Line and Liffy Branch, 13 & 14 Vict.," or to which the provisions of such acts respectively are applicable, and shall not in anywise interfere with or affect the provisions of such acts.

III. The clauses of "The Lands Clauses Consolidation Act, 1845," with respect to the purchase and taking of lands otherwise than by agreement, except sections sixteen and seventeen of the said act, shall not be applicable or in force with respect to any railway or portion of a railway in Ireland to which this act applies.

IV. When and so often as any company authorized to make a railway to which this act applies shall require to purchase or take any lands which they are by the special act authorized to purchase or take, the company shall cause to be made out, and to be signed by their engineer and secretary, maps or plans and schedules of the lands so required (and for the purchase of which lands, or of all the several interests in which lands, the company shall not have contracted), and also of the works which the company propose to make and maintain for the accommodation of lands adjoining the railway (and for compensation in lieu of which the company shall not have contracted), together with the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands respectively, so far as the same can be reasonably ascertained, with estimates of the gross annual value and the value in fee of such lands so required to be purchased or taken as aforesaid, and for the purchase of which, or of all the several interests in which, the company shall not have contracted, and the separate and distinct value of each such

(e) 8 & 9 Vict. c. 18, ante, 45; and see 23 & 24 Vict. c. 97, post.

interest which the company shall not have contracted to purchase, so far as the same can be reasonably ascertained (taking into consideration damage by severance, and any other matters by the Lands Clauses Consolidation Act, 1845, required to be considered, if necessary); and every such map or plan shall be upon a scale of not less than one inch to every two hundred feet; and all lands, buildings, yards and courtyards, and lands within the curtilage of any building, and ground cultivated as a garden, shall be marked thereon with distinct numbers corresponding with the numbers marked upon the parliamentary plans of the railway, and shall have put thereon a distinct valuation to each number, and all bridges, roads, and other works proposed to be made for the use and accommodation of the owners, lessees, and occupiers of the lands adjoining the railway shall also be marked on the said maps or plans; and the company shall deposit such maps or plans, schedules and estimates, at the office of the commissioners of public works in Ireland, and a copy of such maps or plans, schedules and estimates, or so much thereof as relates to every county in or through which the railway is proposed to be made, with the clerk of the peace of each such county, and a copy of so much of the said maps or plans, schedules and estimates, as relates to each electoral division in which any such lands shall be situate, with the clerk of the poor law union in which every such electoral division is situate.

V. After such deposit at the office of the said commissioners as aforesaid, it shall be lawful for the said commissioners, upon the application of the company, to appoint an arbitrator between the company and the persons interested in the lands to which such maps or plans, schedules and estimates relate, and such arbitrator shall, in relation to the lands required and the works to be made and maintained by the company, as herein mentioned, be the arbitrator under this act; and if any such arbitrator die, or refuse, decline, or become incapable to act, the said commissioners may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed.

Commissioners of public works to appoint an arbitrator, on application of company.

VI. The arbitrator may call for the production of any documents in the possession or power of the company, or of any party making any claim under the provisions of this act, which such arbitrator may think necessary for determining any question or matter to be determined by him under this act, and may examine any such party and his witnesses, and the witnesses for the company, on oath, and administer the oaths necessary for that purpose.

Arbitrator may call for documents, and administer oaths.

VII. Before any arbitrator shall enter upon any inquiry, he shall, in the presence of a justice of the peace, make and subscribe the following declaration; that is to say,

Arbitrator to make and subscribe declaration.

"I, *A. B.*, do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act [*naming this act*].

"Made and subscribed in the presence of

."

"*A. B.*"

And such declaration shall be annexed to the award when made; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanor.

VIII. Upon the first appointment of an arbitrator as aforesaid, the said commissioners shall deliver to such arbitrator the maps or plans, schedules and estimates, deposited at their office as hereinbefore required; and the company shall forthwith after such appointment publish notice of such appointment, and of such deposits as hereinbefore directed, with such clerk of the peace and clerks of poor law unions as aforesaid, once in the Dublin Gazette, and once in each of three successive weeks in some one and the same newspaper circulated in the county in which the lands are situate, stating the times and places of such deposits, and requiring all persons claiming to have any right to or interest in the lands required for the purposes of the railway, and specified in such maps or plans, or to have compensation for any injury to any lands injuriously affected by the execution of the works of the company, or to have any works made by the company for the accommodation of lands adjoining the railway, to deliver to the arbitrator, on or before a day fixed by the arbitrator, and named in such notice (and which day shall not be earlier than *thirty-one (f)* days from the date of the insertion of the last of such newspaper notices), a short statement in writing of the nature of such claim; and upon the appointment of any arbitrator in the place of an arbitrator dying, or refusing, declining or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the company shall publish notice of such appointment in the Dublin Gazette.

Maps, &c. deposited with commissioners of public works to be delivered to arbitrator, notice of appointment of arbitrator, &c. to be published.

IX. The arbitrator shall, after the expiration of the period within which such claims are required to be delivered to him as aforesaid, proceed to inquire into and adjudicate upon the value of the lands required for the purposes of the railway, and specified in such maps or plans, and the several interests in such lands, in respect of which no agreement shall have been come to between the company and the persons entitled thereto, and the purchase-money to be paid for such lands, and the compensation to be paid for injury to any lands injuriously affected by the execution of the works of the company, and to

Arbitrator to adjudicate upon compensation to be paid for lands and upon accommodation works.

(f) Twenty-one—23 & 24 Vict. c. 97, s. 1, post.

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inquire and determine what works should be made and maintained by the company for the accommodation of lands adjoining the railway; and the arbitrator shall, after due inquiry and examination, frame a draft award setting forth the price or compensation to be paid by the company in respect of the several interests in the lands so required and specified or injuriously affected, and the works to be made and maintained by the company for the accommodation of lands adjoining the railway; and where any inquiry relates not only to the value of the lands to be purchased, but also to compensation claimed for injury done or to be done to any lands held therewith, the arbitrator shall award separate and distinct sums to be paid for the purchase of such lands, or of any interest therein to which the inquiry may relate, and for the damage (if any) to be sustained by reason of the severing of the lands taken from the other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the company; and such draft award, and copies thereof, or of so much thereof as relates to lands in the respective counties and electoral divisions, shall be deposited as hereinbefore directed concerning the said maps or plans, schedules and estimates, and copies thereof, or of so much thereof as aforesaid; and the arbitrator shall cause notice of such award to be given to all persons entitled to payment or compensation under the same, or who shall have been heard before such arbitrator as claimants for compensation, and also shall cause notice to be published as hereinbefore directed concerning notice of the deposit of copies of the said maps or plans, schedules and estimates, or so much thereof as aforesaid, of the deposit of copies of such draft award, or of so much thereof as aforesaid, and shall in such notices appoint a time and place, or times and places, for holding a meeting or meetings to hear objections against such draft award (the first such meeting to be not earlier than *twenty-one* (g) days after the last day of publication of the said notice), and shall hold such meeting or meetings accordingly, and thereat hear and determine any objections which may then and there be made to such draft award by any person interested therein, or adjourn the further hearing thereof, if the arbitrator see fit, to a future meeting, and may take any measures which he may deem proper for ascertaining the value of any such lands or interests as aforesaid, or the justice or propriety of any other matter of such draft award, and may from time to time, if he see occasion, appoint and hold further meetings for hearing and determining objections to such draft award, of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed; and when the arbitrator has heard and determined all such objections, and made such inquiries as he may think necessary in relation thereto, and made such alteration (if any) as he may deem proper in the draft award, he shall make his award under his hand and seal accordingly; and every such award shall be binding and conclusive, subject to the provisions concerning traverse hereinafter contained, upon all persons whomsoever; and no such award shall be set aside for irregularity in matter of form; and every such award and copies thereof, or of so much thereof as relates to lands in the respective counties and electoral divisions, shall be deposited as hereinbefore directed with respect to the said maps or plans, schedules and estimates, and copies thereof, or of so much thereof as aforesaid; and the company shall thereupon publish notice, as hereinbefore directed concerning notice of the deposit of copies of such maps or plans, schedules and estimates, or of so much thereof as aforesaid, of the deposit of copies of such award, or of so much thereof as aforesaid, and requiring all persons claiming to have any right to or interest in the lands, the price or compensation to be paid in respect of which is ascertained by such award, to deliver to the company, on or before a day to be named in such notice (such day not being earlier than thirty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the company.

Separate awards may be made as to lands in the several parishes or otherwise.

X. Provided always, that the arbitrator may make several awards, so as to include in a separate award the lands in each electoral division, or such portion of the lands in relation to which he is arbitrator as, having reference to the deposits to be made under this act, the meetings to be holden, and the inquiries to be made in relation to such lands, and the convenience of the parties interested in the matter of the arbitration, he may think fit.

Clerks of the peace and clerks of unions required to take charge of documents deposited, as provided by 7 W. 4 & 1 Vict. c. 83.

XI. Every clerk of the peace and clerk of any union is hereby required to retain the documents to be deposited with him under this act in his custody, and to permit all persons interested to inspect the same and to make copies and extracts of and from the same, in like manner, and upon the like terms, and under the like penalty for default, as is provided by an act of the session holden in the seventh year of King William the Fourth and the first year of her Majesty, chapter eighty-three (h).

Expenses of the arbitrator to be borne by the company.

XII. The salary or remuneration, travelling and other expenses of the arbitrator, and all costs, charges and expenses (if any) which shall be incurred by the said commissioners of public works in carrying the provisions of this act into execution, shall be paid by the company; and the amount of such costs, charges and expenses shall from time to time be certified by the said commissioners, after first hearing any objections that may be made to

(g) Fourteen—23 & 24 Vict. c. 97, s. 1, post.

(h) Ante, p. 1.

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the reasonableness of any such costs, charges and expenses by or on behalf of the company; and it shall be lawful for the said commissioners from time to time to require the company to deposit in the Bank of Ireland, to the credit of the said commissioners, any sum or sums of money, or to give such other security for the payment of any such costs, charges and expenses as to the said commissioners shall seem fit; and every certificate of the said commissioners, certifying the amount of such costs, charges and expenses, shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges and expenses, and the amount so certified shall be a debt due from the company to the crown, and shall be recoverable accordingly.

XIII. It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the company; and if within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; but no such certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the company in respect of such claim before the commencement of the arbitration.

Costs of parties.

XIV. Within thirty days from the delivery of such statement and abstract as aforesaid to the company, the company shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate or interest claimed by him, deliver to such person, on demand, a certificate under the company's seal, stating the amount of the price or compensation to which he is entitled under the said award; and where more lands than are included in one number shall be claimed by the same person, such lands, or the interests therein, may be included in one certificate, if the company think fit, such certificates to be prepared by and at the costs of the company; and where any agreement has been entered into in respect to the value of the interest of any person in any lands, or his right to compensation, the company may, where it appears to them that such person is absolutely entitled, deliver to such person a like certificate.

Certificates of amount of compensation to be delivered by company.

XV. The company shall, on demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of monies specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators or assigns; and if the company wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the company in the Court of Queen's Bench in Ireland for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the company, authorized to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all monies payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law or in equity be taken as personal estate as from the time of the company entering on any such lands as aforesaid.

Amount mentioned in certificates to be paid to parties, on demand, &c.

XVI. When and so soon as the company have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases hereinafter mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the company, upon obtaining such receipt as hereinafter mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable.

When amount mentioned in certificates is paid to parties, company may take possession.

XVII. In every case in which any monies are paid by any company under the provisions of this act, for such price or compensation as aforesaid, the party receiving such monies shall give to the company a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such monies are paid, so as such receipt shall have an *ad valorem* stamp of the same amount impressed thereon in respect of the purchase-monies mentioned in such certificate (but exclusive of the amount of compensation for damage by severance or other injury) as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the costs of the company.

Receipts duly stamped to operate as a conveyance.

XVIII. If it appear to the company, from any such statement and abstract as aforesaid, or otherwise, that the party making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the company, then and in every such case the amount to be paid by the company in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of "The Lands Clauses Consolidation Act, 1845," "with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title."

Payment of monies where parties making claims deemed not entitled, or are under disability, or title not satisfactorily deduced.

XIX. Where any person claiming any right or interest in any lands shall refuse to produce his title to the same, or where the company have taken possession of any lands

Where no claim made, or parties

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 refuse to accept
 sum certified,
 money to be paid
 into the bank.

Nothing to pre-
 vent company re-
 quiring further
 evidence of title,
 at their costs.

Delivery of certi-
 ficate may be en-
 forced by Court of
 Chancery.

After deposit of
 draft award com-
 pany may, upon
 deposit of such
 amount as arbi-
 trator may think
 fit, enter upon
 lands.

Company to pay
 interest from time
 of entry.

Mode of deposit.

Deposit to remain
 as a security, and
 to be applied
 under the direc-
 tion of the court.

under the provisions of this act in respect of the price or compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the company taking possession, or if any party to whom any such certificate has been given or tendered refuse to receive such certificate, or to accept the amount therein specified as payable to him, then and in any such case the amount payable by the company in respect of such lands, estate, or interest, or the amount specified in such certificate, shall be paid into the Bank of Ireland, in the name and with the privity of the Accountant-General of the Court of Chancery in Ireland, in manner provided by the last-mentioned clauses of "The Lands Clauses Consolidation Act, 1845," and the amount so paid into the said bank shall be accordingly dealt with as by the said act provided; and no monies paid into the bank under this act shall be liable to ushers' poundage.

XX. Nothing herein contained shall prevent the company from requiring any further abstract or evidence of title respecting any lands included in any such award as aforesaid, in addition to the abstract or statement hereinbefore mentioned, if they think fit, so as the same be obtained at the costs of the company.

XXI. If from any reason whatever the company shall not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands the possession whereof has been taken by the company as aforesaid, then the right to have a certificate according to the provisions of this act may, at the costs and charges of the company, be enforced by any party or parties, by application to the High Court of Chancery in Ireland in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this act may be in like manner enforced against the company by such application as aforesaid.

XXII. *Provided always, that where the company are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions hereinbefore contained, it shall be lawful for the company, at any time after the arbitrator shall have framed his draft award, upon depositing in the Bank of Ireland, as herein directed, such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorized to be purchased or taken by the company, and mentioned in such draft award, to enter upon and use such lands for the purposes of the railway and works of the company; and the arbitrator shall, upon the request of the company, at any time after he shall have framed such draft award, certify under his hand the sum which in his opinion should be so deposited by the company in respect of any lands mentioned in such draft award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such draft award as the sum or sums to be paid by the company in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award, the delivery of certificates, and other proceedings under this act, shall be had, and payments made, as if such entry and deposit had not been made; provided that the company shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the purchase and compensation money payable by them in respect of any lands so entered upon, from the time of their entry until the time of the payment of such money and interest to the party entitled thereto, or where, under the provisions of this act, such purchase-money or compensation is required to be paid into the said bank, then until the same, with such interest, is paid into such bank accordingly; and where under this provision interest is payable on any purchase or compensation money the certificate to be delivered by the company in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate (h).*

XXIII. The money to be deposited as aforesaid in respect of any lands shall be paid into the Bank of Ireland in the name and with the privity of the Accountant-General of the Court of Chancery in Ireland, to be placed to his account there to the credit of the company (describing the company by its proper name), in the matter of the Railways Act (Ireland), 1851, and of the lands in respect of which the same is paid, subject to the control and disposition of the said court; and upon such deposit the cashier of the said bank shall give to the company, or to the party paying in such money by their direction, a receipt for the same (i).

XXIV. The money so deposited as last aforesaid shall remain in the bank by way of security to the parties interested in the lands which shall so have been entered upon, for the payment of the money to become payable by the company in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the company, be ordered to be invested in bank annuities or government securities, and accumulated; and upon such payment as aforesaid by the company it shall be lawful for the Court of Chancery in Ireland, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the company, or in default of such payment as aforesaid by the company, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited (k).

(h) Sect. 22 is repealed, and 23 & 24 c. 97, s. 3, post, substituted.

Vict. c. 97, s. 2, post, substituted.

(k) Sect. 24 is repealed, and 23 & 24

(i) Sect. 23 is repealed, and 23 & 24 Vict. Vict. c. 97, s. 4, post, substituted.

XXV. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the said Court of Chancery, to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank, to such credit as aforesaid (subject nevertheless to being dealt with as herein provided), such sum of money as the company shall by some writing signed by their secretary or solicitors for the time being, addressed to the governor and company of the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-General's office, the solicitor for the company shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of Ireland the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt for the said payment be given to the party making the same in the usual way, for the purpose of being filed at the report office.

XXVI. Where the party named in any certificate issued under the provisions hereinbefore contained of the amount of the price or compensation ascertained by any award under this act (or any party claiming under the party so named) shall be dissatisfied with the amount in such certificate certified to be payable, and where any party claiming any interest in any monies so paid into the court as aforesaid shall be dissatisfied with the amount of the price or compensation in respect of which such monies shall be so paid into court, and where any party interested in land adjoining any railway shall be dissatisfied with any award under this act so far as respects any works for the accommodation of such lands thereby awarded to be made and maintained by the company, or which such party may claim to have so made and maintained, it shall be lawful for such party, at the assizes for the county in which the lands are situate, or, where the lands are situate in the county of Dublin or county of the city of Dublin, in the term next following the giving of such certificate or the payment of such money into court, or (if the claim be only in respect of accommodation works) the making of the award, or where such assizes are holden or such term begins within less than twenty-one days after the giving of such certificate, or the payment of such money, or the making of the award, then at the next subsequent assizes, or in the next subsequent term (as the case may be), upon giving ten days' notice in writing previously to such assizes or term respectively to the secretary of the company, of the amount or the accommodation works intended to be claimed, to have a traverse for damages entered in the crown book in respect of such claim, and thereupon such traverse shall be tried in like manner, and like proceedings shall be had, and subject to like provisions, as far as the same can be applied, as in the case of traverses entered for damages under the acts for consolidating and amending the laws relating to the presentment of public monies by grand juries in Ireland: provided always, that the sum to be awarded or allowed as the costs, charges and expenses of the trial of every such traverse for damages shall in no case exceed the sum of twenty pounds, and further that no party shall have any other remedy for the purpose of impeaching the amount of any price or compensation ascertained by any such award as aforesaid, or the sufficiency of the accommodation works awarded thereby, other than by means of such traverse as aforesaid, anything in any act to the contrary notwithstanding: provided also, that the jury which shall try such traverse shall be sworn a true verdict to give, whether any and what damages will be sustained by the traverser, regard being had to the value of the lands of such traverser required, and to the injury to any lands of such traverser injuriously affected by the works of the company, or (as the case may be) as to what accommodation works ought to be made and maintained by the company for the accommodation of the lands of the traverser, or to the like effect respectively, as the case may be.

XXVII. The entry of the verdict of the jury in case of each traverse in the crown book shall be a final decision, and binding upon all parties interested, and shall have the effect of a judgment at law obtained in the Court of Queen's Bench in Ireland against the company, and may be enforced by like remedies against the company, as in the case of a judgment at law, by all parties interested therein; and in each case where a certificate shall have been delivered, such damages shall be taken and recovered in lieu of the monies expressed to be payable by the certificate, and which shall, on payment of the damages, and any costs payable by the company, be delivered up to the said company, and such receipt for such damages shall be given as hereinbefore provided in cases of payment of monies on such certificates as aforesaid; and where such damages shall be given in respect of any land, the amount of the price or compensation in respect of which, as ascertained by an award under this act, shall have been paid into court, then if the amount of such damages shall be less than the amount paid into court, the company shall, on a summary application by petition, be entitled to receive the difference between the amount of such damages and the amount of the sum paid into court, but if the amount of such damages shall exceed the amount of monies paid into court, then the difference between the amount paid in and the damages shall, at the costs of the company, be paid into court;

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Company may deposit money by way of security while the office of the Accountant-General is closed.

Parties dissatisfied with award, may enter a traverse at assizes (1).

Verdict on traverse to have effect of judgment.

(1) As to costs, see 23 & 24 Vict. c. 97, s. 7, post.

APPENDIX.

Act to apply to the purchase of lands for extraordinary purposes.

Provisions of 8 & 9 Vict. c. 18, incorporated with this act.

Meaning of "the company."

Act to extend to Ireland only.

Continuance of act, five years.

and the payment of such difference into court, and the payment of any costs payable by the company in respect of such traverse, shall be a good discharge to the company on any such verdict in the nature of a judgment as aforesaid.

XXVIII. The provisions of this act shall extend to the purchase by the company of lands for extraordinary purposes.

XXIX. All the provisions of "The Lands Clauses Consolidation Act, 1845," shall, subject to the provisions herein contained, extend to and be taken as part of this act, except so far as the same are inconsistent therewith.

XXX. In the construction of this act the words "the company" shall mean the company constituted by the special act.

XXXI. This act shall extend to Ireland only.

XXXII. This act shall continue in force for five years next after the passing thereof, and thence to the end of the then next session of Parliament (m).

17 & 18 VICT. CAP. 31.

An Act for the better Regulation of the Traffic on Railways and Canals (n).

[10th July, 1854.]

Whereas it is expedient to make better provision for regulating the traffic on railways and canals: be it enacted (&c. &c.) as follows:

"Board of Trade."

"Traffic."

"Railway."

"Canal."

"Company."

"Stations."

Duty of railway companies to make arrangements for receiving and forwarding traffic, without unreasonable delay, and without partiality.

I. In the construction of this act "the Board of Trade" shall mean the Lords of the Committee of her Majesty's Privy Council for Trade and Foreign Plantations:

The word "traffic" shall include not only passengers, and their luggage, and goods, animals and other things conveyed by any railway company or canal company, or railway and canal company, but also carriages, waggons, trucks, boats and vehicles of every description adapted for running or passing on the railway or canal of any such company:

The word "railway" shall include every station of or belonging to such railway used for the purposes of public traffic; and,

The word "canal" shall include any navigation whereon tolls are levied by authority of Parliament, and also the wharves and landing places of and belonging to such canal or navigation, and used for the purposes of public traffic:

The expression "railway company," "canal company" or "railway and canal company" shall include any person being the owner or lessee of or any contractor working any railway or canal, or navigation constructed or carried on under the powers of any act of Parliament:

A station, terminus or wharf shall be deemed to be near another station, terminus or wharf when the distance between such stations, termini or wharves shall not exceed one mile, such stations not being situate within five miles from St. Paul's Church, in London.

II. Every railway company, canal company and railway and canal company shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats and other vehicles, and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station or wharf of the one near the terminus, station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the

(m) This act was continued by 19 & 20 Vict. c. 72, and 21 & 22 Vict. c. 84, and afterwards amended and made perpetual by 23 & 24 Vict. c. 97, post.

(n) This act was made applicable to tramways in Ireland by 23 & 24 Vict. c.

152, post; and to railway companies incorporated by certificate of the Board of Trade under "The Railways Construction Facilities Act, 1864," by that act, 27 & 28 Vict. c. 121, post; and was extended to steamers by 26 & 27 Vict. c. 92, s. 31, post.

railways and canals of the several companies, be at all times afforded to the public in that behalf (o).

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III. It shall be lawful for any company or person complaining against any such companies or company of anything done, or of any omission made in violation or contravention of this act, to apply in a summary way, by motion or summons, in England, to her Majesty's Court of Common Pleas at Westminster, or in Ireland to any of her Majesty's superior courts in Dublin, or in Scotland to the Court of Session in Scotland, as the case may be, or to any judge of any such court; and, upon the certificate of her Majesty's Attorney-General in England or Ireland, or her Majesty's Lord Advocate in Scotland, of the Board of Trade, alleging any such violation or contravention of this act by any such companies or company, it shall also be lawful for the said Attorney-General or Lord Advocate to apply in like manner to any such court or judge, and in either of such cases it shall be lawful for such court or judge to hear and determine the matter of such complaint; and for that purpose, if such court or judge shall think fit, to direct and prosecute, in such mode and by such engineers, barristers or other persons as they shall think proper, all such inquiries as may be deemed necessary to enable such court or judge to form a just judgment on the matter of such complaint; and if it be made to appear to such court or judge on such hearing, or on the report of any such person, that anything has been done or omission made in violation or contravention of this act, by such company or companies, it shall be lawful for such court or judge to issue a writ of injunction or interdict, restraining such company or companies from further continuing such violation or contravention of this act, and enjoining obedience to the same, and in case of disobedience of any such writ of injunction or interdict, it shall be lawful for such court or judge to order that a writ or writs of attachment, or any other process of such court incident or applicable to writs of injunction or interdict, shall issue against any one or more of the directors of any company, or against any owner, lessee, contractor or other person failing to obey such writ of injunction or interdict; and such court or judge may also, if they or he shall think fit, make an order directing the payment, by one or more of such companies, of such sum of money as such court or judge shall determine, not exceeding for each company the sum of two hundred pounds for every day after a day to be named in the order, that such company or companies shall fail to obey such injunction or interdict, and such monies shall be payable as the court or judge may direct, either to the party complaining or into court, to abide the ultimate decision of the court, or to her Majesty, and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by decree or judgment in any superior court at Westminster or Dublin, in England or Ireland, and in Scotland by such diligence as is competent on an extracted decree of the Court of Session; and in any such proceeding as aforesaid, such court or judge may order and determine that all or any cost thereof or thereon incurred shall and may be paid by or to the one party or the other, as such court or judge shall think fit; and it shall be lawful for any such engineer, barrister or other person, if directed so to do by such court or judge, to receive evidence on oath relating to the matter of any such inquiry, and to administer such oath (p).

Parties complaining that reasonable facilities, for forwarding traffic, &c., are withheld, may apply by motion or summons to the Superior Courts.

IV. It shall be lawful for the said Court of Common Pleas at Westminster, or any three of the judges thereof, of whom the chief justice shall be one, and it shall be lawful for the said courts in Dublin, or any nine of the judges thereof, of whom the Lord Chancellor, the Master of the Rolls, the Lord Chief Justice of the Queen's Bench and Common Pleas and the Lord Chief Baron of the Exchequer shall be five, from time to time to make all such general rules and orders as to the forms of proceedings and process, and all other matters and things touching the practice and otherwise in carrying this act into execution before such courts and judges, as they may think fit, in England or Ireland, and in Scotland it shall be lawful for the Court of Session to make such acts of sederunt for the like purpose as they shall think fit (q).

Judges may make such regulations as may be necessary for proceedings under this act.

V. Upon the application of any party aggrieved by the order made upon any such motion or summons as aforesaid, it shall be lawful for the court or judge by whom such order was made, to direct, if they think fit so to do, such motion or application on summons to be reheard before such court or judge, and upon such rehearing to rescind or vary such order.

Court or judge may order a rehearing.

VI. No proceeding shall be taken for any violation or contravention of the above enactments, except in the manner herein provided; but nothing herein contained shall take away or diminish any rights, remedies or privileges of any person or company against any railway or canal or railway and canal company under the existing law.

Mode of proceeding under this act.

VII. Every such company as aforesaid shall be liable for the loss of or for any injury done to any horses, cattle or other animals, or to any articles, goods or things in the receiving, forwarding or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such

Company to be liable for neglect or default in the carriage of goods, notwithstanding

(o) See ante, text, 455.

(p) See ante, text, 456.

(q) See the rules issued Michaelmas Term, 1854, ante, text, 457.

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notice to the contrary (q).

Company not to be liable beyond a limited amount in certain cases, unless the value declared and extra payment made.

Proof of value to be on the person claiming compensation.

No special contract to be binding unless signed.

Saving of Carriers Act, 11 Geo. IV. and 1 Will. IV. c. 68.

Short title.

notice, condition or declaration being hereby declared to be null and void: provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding and delivering of any of the said animals, articles, goods or things as shall be adjudged by the court or judge before whom any question relating thereto shall be tried to be just and reasonable: provided always, that no greater damages shall be recovered for the loss of or for any injury done to any of such animals, beyond the sums hereinafter mentioned; (that is to say,) for any horse, fifty pounds; for any neat cattle, per head, fifteen pounds; for any sheep or pigs, per head, two pounds; unless the person sending or delivering the same to such company shall, at the time of such delivery, have declared them to be respectively of higher value than as above mentioned, in which case it shall be lawful for such company to demand and receive, by way of compensation for the increased risk and care thereby occasioned, a reasonable per centage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge; and such per centage or increased rate of charge shall be notified in the manner prescribed in the statute eleventh George Fourth and first William Fourth, chapter sixty-eight (r), and shall be binding upon such company in the manner therein mentioned: provided also, that the proof of the value of such animals, articles, goods and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury: provided also, that no special contract between such company and any other parties respecting the receiving, forwarding or delivering of any animals, articles, goods or things as aforesaid, shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods or things respectively for carriage: provided also, that nothing herein contained shall alter or affect the rights, privileges or liabilities of any such company under the said act of the eleventh George Fourth and first William Fourth, chapter sixty-eight, with respect to articles of the descriptions mentioned in the said act.

VIII. This act may be cited for all purposes as "The Railway and Canal Traffic Act, 1854."

17 & 18 VICT. CAP. 97.

An Act to amend and extend the Acts for the Inclosure, Exchange and Improvement of Land.
[10th August, 1854.]

Application of compensation for common rights, paid under 8 & 9 Vict. c. 18.

Money to be paid into Bank of England.

Interest to be ascertained by commissioners.

XV. Where any money shall have been or may hereafter be paid to a committee under "The Lands Clauses Consolidation Act, 1845," or under any railway or other special act by which money may have been directed or authorized to be paid to a committee as compensation for the extinction of commonable or other rights, or for lands being common lands or in the nature thereof, the right to the soil of which may have belonged to the commoners, and the majority of such committee shall be of opinion that the provisions of such act for the apportionment thereof cannot be satisfactorily carried into effect, such majority may make application in writing to the commissioners to call a meeting of the persons interested in such compensation money to determine whether or not such compensation money shall be apportioned under the provisions of this act.

XVI. If the majority in number and interest shall resolve that such compensation money shall be apportioned, the amount of such compensation money shall be forthwith paid into the Bank of England to the credit of an account to be named by the Inclosure Commissioners for England and Wales, and the said committee shall be absolutely discharged from all liability in respect of such compensation money upon payment thereof into the Bank of England as hereinbefore directed.

XVII. As soon as the said monies shall have been paid into the bank as aforesaid the said inclosure commissioners, or any assistant commissioner appointed or to be appointed by them for that purpose, shall proceed to ascertain, determine and award the names of the parties who were entitled to such estates, rights and interests in the said common and commonable lands, and the amount or value of the respective shares, rights and interests therein, and the proportionate amount of the price so to be paid as aforesaid for such estates, rights and interests to which each party so entitled as aforesaid is entitled in respect of his share, right or interest as aforesaid; and the award of the commissioners, under their common seal, or assistant commissioner in writing under his hand and seal, shall be binding on all parties claiming such estates, rights and interests as aforesaid; and for the purpose of ascertaining the rights and interests of such parties as aforesaid, it shall be lawful for the said inclosure commissioners, or assistant commissioner, to call such meetings as they or he shall think fit of all persons having or claiming any such rights or interests in the said common and commonable lands as aforesaid, at such time and place as the said commissioners or assistant commissioner shall think fit, so as the same

(q) See ante, text, 505.

(r) Ante, text, 512.

shall be appointed by a public notice thereof in writing to be affixed at least twelve days before such meeting on the principal outer door of the parish church in which such land or any part is situate, and to be inserted in one of the public newspapers published or generally circulated in the county in which such land is situate; and at such meeting the said commissioners or assistant commissioner do and shall proceed to examine into and ascertain all and every the claims which shall be made or put forward in respect of any such rights or interests as aforesaid, and the relative and proportionate value of the estates, rights and interests of any person or persons claiming to be entitled thereto, and for that purpose do and may employ any valuer or surveyor, and call for and receive such records, deeds and writings, and such other proof or evidence as the said commissioners or assistant commissioner may think fit, and they and he are and is hereby authorized and required to take the testimony of any witnesses upon oath (which oath they and he are and is respectively hereby empowered to administer), or to take the affirmation of such witnesses in cases where affirmation is allowed by law instead of oath.

XVIII. All the costs and expenses of the said inclosure commissioners and assistant commissioner, and of any valuer or surveyor employed by them or him under the provisions hereinbefore contained, shall in the first place be paid out of such compensation monies, and the residue of the said monies shall be paid and divided between and amongst the said several parties to be named in the said award, and in the shares and proportion to be ascertained and set forth in such award.

XIX. When it shall appear to the commissioners or assistant commissioner that any of the parties entitled to such rights or interests are only entitled thereto for a limited interest, then it shall be lawful for them or him, by their or his award, to direct that the monies to be paid in respect of such right or interest, where the same shall exceed twenty pounds, shall be paid to the trustees acting under the will, conveyance or settlement under which such person having such limited interest shall be interested in such rights or interests, and where there are no trustees, then into the hands of trustees to be appointed under the hand and seal of the commissioners, to be held by them on trusts similar to the uses or trusts to which such rights or interests had been immediately before the payment of such monies into the Bank subject to or as near thereto as the said commissioners or assistant commissioner can ascertain, and the receipts of any trustees to whom any such monies shall be paid as aforesaid shall be good and sufficient discharges for the same: provided always, that the payment of all such sums shall from time to time be subject to such rules and regulations for the purpose of ensuring the payment thereof to the person or persons duly entitled to receive the same as the said commissioners shall by any order direct.

XX. In all cases where the sum payable by virtue of such award in respect of any estate, right or interest shall not exceed twenty pounds, and the person entitled to such estate, right or interest shall be under any disability or incapacity, such sum shall and may be paid to the guardian committee or husband of such person, and where any such person shall have a limited interest only in such estate, right or interest, the whole of such sum shall and may nevertheless be paid to the person having such limited interest, to his or her guardian, committee or husband, as the case may be.

As to payment of costs of inclosure commissioners, and as to the residue of monies.

Compensation for limited interest to be paid to trustees.

As to sums payable in respect of lands not exceeding 20l.

18 & 19 VICT. CAP. 122.

An Act to amend the Laws relating to the Construction of Buildings in the Metropolis and its Neighbourhood. [14th August, 1855.]

PART I.

Regulation and Supervision of Buildings.

VI. The following buildings and works shall be exempt from the operation of the first part of this act [*inter alia*] the buildings belonging to any canal, dock or railway company (*s*), and used for the purposes of such canal, dock or railway under the provisions of any act of Parliament.

20 & 21 VICT. CAP. 31.

An Act to amend and explain the Inclosure Acts. [10th August, 1857.]

IV. For the purposes of removing all doubts as to the power of companies incorporated by special act of Parliament for the making and maintaining of any railway, canal, docks,

Exchanges of land by railway and other companies.

(*s*) See *North Kent R. Co. v. Badger*, 27 L. J. (M. C.) 106. This section was made applicable to railway companies incorporated by certificate of the Board of Trade

under "The Railways Construction Facilities Act, 1864," by that act, 27 & 28 Vict. c. 121, post.

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harbour, waterworks or other work, to exchange land belonging to such companies under the provisions of the said acts: be it declared and enacted, that every such company shall be deemed to be a person interested within the meaning of "The Acts for the Inclosure, Exchange and Improvement of Land," for the purpose of exchanging land belonging to the said company, and that notwithstanding the provisions in any act of Parliament relating to such company specially limiting the purposes to which such land belonging to the said company shall be applicable.

21 & 22 VICT. CAP. 75.

An Act to amend the Law relating to Cheap Trains, and to restrain the Exercise of certain Powers by Canal Companies being also Railway Companies (t).

[2nd August, 1858.]

7 & 8 Vict. c. 85,
s. 6.

8 & 9 Vict. c. 42.

For fractions under one mile one penny may be charged, and for fractions exceeding half a mile, where the distance amounts to one mile or more, one halfpenny may be charged.

Rates heretofore charged not exceeding those allowed by this clause not to be deemed excessive.

Canal companies, being also railway companies, not to take leases of canal unless specially authorized.

Act to be in force for one year.

Whereas by the act 7 & 8 Vict. c. 85, s. 6 (u), it is enacted, amongst other things, with respect to the cheap trains thereby required to be provided in certain cases, that the fare or charge for each third-class passenger by any such train shall not exceed one penny for each mile travelled: And whereas it is expedient to amend the said act in manner hereinafter mentioned: And whereas it is also expedient to amend the act passed in the ninth year of the reign of her present Majesty, chapter forty-two, intituled "An Act to enable Canal Companies to become Carriers of Goods upon their Canals," by restraining, as hereinafter mentioned, the exercise of certain powers therein contained: Be it enacted, by (&c. &c.), as follows:—

I. When the distance travelled by any third-class passenger by any train run in compliance with the provisions relating to cheap trains contained in the said act of the seventh and eighth of Victoria, chapter eighty-five, is a portion of a mile, and does not amount to one mile, the fare for such portion of a mile may be one penny, or when such distance amounts to one mile, or two or more miles, and a portion of another mile, the fare or charge for such portion of a mile, if the same amounts to or exceeds one half mile, may be one halfpenny: provided always, that for children of three years and upwards, but under twelve years of age, the fare or charge shall not exceed half the charge for an adult passenger.

II. After the passing of this act, no fare heretofore charged to or received from any third-class passenger by any such train as aforesaid shall in any proceeding to be hereafter instituted be deemed to have exceeded the rate prescribed in such case by the said act of the 7 & 8 Vict. c. 85, if the same shall not have exceeded the rate of one farthing for each entire quarter of a mile travelled.

III. Notwithstanding anything contained in the said recited act of the ninth year of her Majesty, it shall not be lawful for any canal or navigation company, being also a railway company, or entitled to work any railway constructed under the authority of any act of Parliament, hereafter to accept a lease of the whole or any part of the undertaking of any other railway and canal company or of any canal or navigation company, or of the tolls, dues or charges upon or in respect of the whole or any part of any such undertaking, except under the powers of some act or acts heretofore passed or to be hereafter passed in which the parties to any such lease shall be specifically named and authorized to enter into the same.

IV. This act shall continue in force for one year next after the passing thereof, and thence to the end of the then next session of Parliament (v).

21 & 22 VICT. CAP. 78.

An Act to enable the Committees of both Houses of Parliament to administer Oaths to Witnesses in certain Cases.

[2nd August, 1858.]

Whereas it is expedient that the evidence taken before the committees of either house of Parliament on a private bill should be available, if desired, before the committee of the other house to which the same bill is referred, and that for this purpose the committees of the House of Commons on private bills should be enabled to administer an oath to the witnesses examined before them; and it is also expedient, for the convenience of the House of Lords, that the committees of that house should be enabled to administer an

(t) This act was made applicable to railway companies incorporated by certificate of the Board of Trade under "The Railways Construction Facilities Act, 1864,"

by that act, 27 & 28 Vict. c. 121, post.

(u) Ante, p. 19.

(v) Made perpetual by 23 & 24 Vict. c. 41.

oath to the witnesses examined before them, instead of such witnesses being as heretofore sworn at the bar of the house: Be it enacted, by (&c. &c.), as follows:—

I. Any select committee of the house of commons to which any private bill has been referred by the house may examine witnesses upon oath upon matters relating to such bill, and for that purpose may administer an oath to any such witness.

II. Any committee of the house of lords may administer an oath to the witnesses examined before such committee.

III. Any person examined as aforesaid who shall wilfully give false evidence shall be liable to the penalties of perjury.

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Select committees of House of Commons may examine witnesses upon oath, and administer the same.

Any committee of H. L. may administer oath.

False evidence perjury.

22 & 23 VICT. CAP. 59.

An Act to enable Railway Companies to settle their Differences with other Companies by Arbitration (x). [13th August, 1859.]

For the better providing for the settlement by arbitration of matters in which railway companies in the United Kingdom are mutually interested, be it enacted, by (&c. &c.), as follows; (that is to say,)

I. This act may for all purposes be cited as "Railway Companies Arbitration Act, 1859;" and the expression "railway companies" in this act extends to and includes all persons being the owners or lessees of, and all contractors working any railway upon which steam power is used.

Short title.

"Railway Companies."

II. Any two or more railway companies, whether already or hereafter incorporated (in this act called "the companies"), from time to time, by writing under their respective common seals, may agree to refer and may refer to arbitration, in accordance with this act, any then existing or future differences, questions, or other matters whatsoever in which they then are or thereafter shall be mutually interested, and which they might lawfully settle or dispose of by agreement between themselves, and may delegate to the person or persons to whom the reference is made any power to determine all or any of the terms of any contract to be made between the companies which the directors of the companies respectively might lawfully delegate to any committees of themselves respectively.

Power for railway companies to refer matters to arbitration.

III. The companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke any agreement for reference in accordance with this act theretofore entered into between the companies, or any of the terms, conditions, or stipulations thereof.

Power to alter or revoke agreements for reference.

IV. Every reference or agreement in accordance with this act, except so far as it is from time to time revoked or modified in accordance with this act, shall bind the companies, and may and shall be carried into full effect.

Agreements to be carried into effect.

V. Where the companies agree, the reference shall be made to a single arbitrator.

Reference to a single arbitrator.

VI. Except where the companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows; to wit,

Reference to two or more arbitrators.

Where there are two companies the reference shall be made to two arbitrators:

Where there are three or more companies the reference shall be made to so many arbitrators as there are companies.

VII. Where there are to be two or more arbitrators, every company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other company or companies.

Appointment of arbitrators by companies.

VIII. Where there are to be two or more arbitrators, if any of the companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the Board of Trade, instead of the company so failing to appoint an arbitrator, may appoint an arbitrator; and the arbitrator so appointed shall for the purposes of this act be deemed to be appointed by the company so failing.

Appointment of arbitrators by Board of Trade.

IX. When the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

Appointment of arbitrators by companies to supply vacancies.

X. Where the company by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit, or failing to act, fail to make the appointment within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the Board of Trade may appoint an arbitrator; and the arbitrator so appointed by the Board of Trade shall for the purposes of this act be deemed to be appointed by the company so failing.

Appointment of arbitrators by Board of Trade to supply vacancies.

(x) See ante, text, 490. This act was made applicable to railway companies incorporated by certificate of the Board of

Trade under "The Railways Construction Facilities Act, 1864," by that act, 27 & 28 Vict. c. 121, post.

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Appointment of arbitrator not revocable.

Appointment of umpire by arbitrators.

Appointment of umpire by Board of Trade.

Appointment of umpire by arbitrators to supply vacancy.

Appointment of umpire by Board of Trade to supply vacancy.

Succeeding arbitrators and umpires to have powers of predecessors.

Reference to umpire.

Power for arbitrators, &c. to call for books, &c., and administer oath.

Procedure in the arbitration.

Arbitration may proceed in absence of companies.

Several awards may be made.

Awards made in due time to bind all parties.

Power for umpire to extend period for making his award.

Awards not to be set aside for informality.

Awards to be obeyed.

Agreements, arbitrations and

XI. When any appointment of an arbitrator is made, the company making the appointment shall have no power to revoke the appointment, without the previous consent in writing of the other company or every other company in writing under their common seal.

XII. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

XIII. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this act be deemed to be appointed by the arbitrators.

XIV. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

XV. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness, or failure to act of their umpire, then, on the application of the companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this act be deemed to be appointed by the arbitrators so failing.

XVI. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

XVII. Where there are two or more arbitrators, if they do not, within such a time as the companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

XVIII. The arbitrator, and the arbitrators, and the umpire respectively may call for the production of any documents or evidence in the possession or power of the companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators, or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the companies respectively on oath, and may administer the requisite oath; and in Scotland may grant diligence for the recovery of the documents or evidence, and for citing witnesses, and on application to the lord ordinary he may issue letters of supplement or other necessary writs in support of the diligence.

XIX. Except where and as the companies otherwise agree, the arbitrator, and the arbitrators, and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit.

XX. The arbitrator, and the arbitrators, and the umpire respectively may proceed in the absence of all or any of the companies in every case in which, after giving notice in that behalf to the companies respectively, the arbitrator, or the arbitrators, or the umpire shall think fit so to proceed.

XXI. The arbitrator, and the arbitrators, and the umpire respectively may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred; and every such award on part of the matters shall for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

XXII. The award of the arbitrator, or of the arbitrators, or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the companies within such a time as the companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator, or the arbitrators, or the umpire, shall be binding and conclusive on all the companies.

XXIII. Provided always, that (except where and as the companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made; and if it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

XXIV. No award made on any arbitration in accordance with this act shall be set aside for any irregularity or informality.

XXV. Except only so far as the companies bound by any award in accordance with this act from time to time otherwise agree, all things by every award in accordance with this act lawfully required to be done, omitted, or suffered shall be done, omitted, or suffered accordingly.

XXVI. Full effect shall be given by all the superior courts of law and equity in the United Kingdom, according to their respective jurisdiction, and by the companies re-

spectively, and otherwise, to all agreements, references, arbitrations, and awards in accordance with this act; and the performance or observance thereof may, where the courts think fit, be compelled by distress infinite on the property of the companies respectively, or by any other process against the companies respectively or their respective property that the courts or any judge thereof shall direct, and where requisite frame for the purpose.

XXVII. Except where and as the companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators, and the umpire respectively.

XXVIII. Except where and as the companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the companies in equal shares, and in other respects the companies shall bear their own respective costs.

XXIX. The submission to any arbitration in accordance with this act may at any time be made a rule of any of her Majesty's Superior Courts of Record at Westminster, or, as the case may be, at Dublin, on the application of any party interested; and the court may remit the matter to the arbitrator, or to the arbitrators, or to the umpire, with any directions the court think fit.

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awards to have effect.

Costs of arbitration and award.

Payment of costs.

Submission to arbitration to be made a rule of court.

23 & 24 VICT. CAP. 14.

An Act for granting to Her Majesty Duties on Profits arising from Property, Professions, Trades and Offices.

[3rd April, 1860.]

V. No assessment shall be made under this act by the commissioners for general purposes in respect of the annual value or profits and gains arising from any railway, but in lieu thereof every such assessment shall be made by the commissioners for special purposes, and upon the value or profits and gains for the year ending the fifth day of April, 1860, and the said last-mentioned commissioners shall notify the assessment to the secretary or other officer of the company upon which the same shall be made, and the amount of such assessment shall be paid, collected and levied in like manner as any other assessment made by the said commissioners for special purposes.

Commissioners for special purposes to assess railways;

VI. In like manner as aforesaid, the commissioners for special purposes shall assess the duties payable under schedule (E) in respect of all offices and employments of profit held in or under any railway company (y), and shall notify to the secretary or other officer of such company the particulars thereof, and the said assessment shall be deemed to be and shall be an assessment upon the company, and paid, collected and levied accordingly; and it shall be lawful for the company, or such secretary or other officer, to deduct and retain out of the fees, emoluments or salary of each such officer or person the duty so charged in respect of his profits and gains.

and also the persons employed by railway companies.

23 & 24 VICT. CAP. XXIX.

An Act for more effectually carrying out the Clearing House System in Ireland, and for facilitating legal Proceedings in relation thereto (z).

[15th May, 1860.]

Whereas for some time past arrangements have subsisted between several railway, canal, and steam packet companies and public carriers in Ireland for facilitating the transmission of the through traffic in passengers, animals, minerals, goods, and all other descriptions of traffic passing over and upon railways, canals, and steam packets belonging to different companies, for the purpose of affording in respect to such passengers, animals, minerals, goods, and such other traffic, the same or the like facilities of through booking and charges, and otherwise, as if such railways, canals, and steam packets had belonged to one company, and for the settlement of the accounts of the receipts for through traffic in which two or more companies or parties are interested, and of the accounts arising out of the use by a company or other party of the carrying stock belonging to other companies or parties, and for the audit and adjustment of such traffic accounts of companies or parties as may be submitted to the clearing house for that purpose, which arrangements are conducted

(y) Persons employed by a railway company at weekly wages are not persons holding public employments, &c., within the third rule of Schedule (E), and the company is not liable to be assessed in respect of such servants. But it would seem that such persons, if their income amount to

100*l.* a year, are liable to be assessed under Schedule (D). *Attorney-General v. Lancashire and Yorkshire R. Co.*, 33 Law J. (Exch.) 163.

(z) The English Clearing House Act is 13 & 14 Vict. c. xxxiii., ante, 116.

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under the control and superintendence of a committee appointed by the several railway, canal, and steam packet and other companies, and persons who are parties thereto, which committee is in this act designated "the committee," and the business of such committee has heretofore been in and is now carried on under the name or style of the Irish Railway Clearing House (hereinafter designated "the clearing house") in Dawson Street in the city of Dublin: And whereas the aforesaid arrangements have been productive of great convenience to the public and to the parties thereto, and a considerable saving of expense in the transmission of passengers, animals, minerals, goods, and other traffic over and upon the railways, canals, and steam packets belonging to such parties: And whereas difficulties have arisen in carrying the objects of the clearing house into effect in consequence of the committee not possessing the power of prosecuting or defending actions or suits, or taking other legal proceedings, and it is therefore expedient to remove such difficulties, and to extend and improve the clearing house system and the proceedings connected therewith; but the purposes aforesaid cannot be effected without the authority of parliament: May it therefore please your majesty that it may be enacted; and be it enacted, by (&c. &c.), as follows:

Parties to the clearing house to be subject to the provisions of this act.

I. The several companies, corporations, partnerships, and persons who at the time of the passing of this act are parties to the clearing house shall be subject to the provisions of this act, and all such companies, corporations, partnerships, and persons as shall respectively become, in manner hereinafter mentioned, parties to the clearing house, shall be subject to the like provisions; (that is to say,) every other company, corporation, partnership, and person who now is or are or hereafter may be engaged, or is or are or may be empowered to be engaged, either solely or in conjunction with any other business, in the business of carrying passengers, animals, minerals, goods, and moveable chattels and effects of whatever kind, or any of them, by land and water, or by land or by water, to or from any part or parts of Ireland, and all persons who shall be engaged in any such carrying business as aforesaid as lessees of or contractors with any such company, corporation, partnership, or person.

Other parties may join with assent of committee.

II. If any company, corporation, partnership, or person who may not be a party to the clearing house shall, by writing sealed with the common seal of any such company or corporation, or under the hand of any such partnership or person, request the committee to be admitted a party to the clearing house, and the committee shall assent to such request, such company, corporation, partnership, or person shall from the time of such assent being given, or at such other time as may be specified in the said request, become a party to the clearing house.

Parties may retire on giving notice.

III. If any party to the clearing house shall desire to retire therefrom, or cease to be a party thereto, and shall give notice thereof in writing to the committee, such party shall, at the expiration of three calendar months from the time when such notice shall be given, or if a more distant time shall be stated in such notice, then at the time so stated, cease to be a party to the clearing house: provided always, that such notice shall, in the case of a company or corporation, be sealed with the common seal of such company or corporation, and in the case of a partnership, to be under the hands of at least two co-partners; provided also, that such party shall have paid and discharged all sums due by such party to the committee.

Committee may give parties notice to retire.

IV. If not less than two-thirds of the committee present at a meeting specially summoned shall, by writing signed by their secretary or by two members of the committee, give notice to any company, corporation, partnership or person that they or he, as the case may be, shall cease to be a party to the clearing house at a time named in such notice, not being less than one calendar month from the time of giving such notice, such company, corporation, partnership or person shall, at the time so named, cease to be a party to the clearing house.

Appointment of the committee.

V. Subject to the provisions hereinafter contained, the committee shall consist of delegates appointed by parties to the clearing house only, and shall be composed in the manner following: (that is to say), each company or corporation shall appoint a delegate being a director of such company or member of such corporation, each partnership shall appoint one of its members to be a delegate, and each person may appoint himself or another as a delegate, such appointment, in the case of a company or corporation, to be under seal, and in the case of a partnership, to be under the hands of at least two co-partners, and in the case of a person, to be under the hand and seal of such person: Provided always, that any such delegate may represent two or more parties on the committee, but shall in no case have more than one vote; provided also, that the acts of the committee shall be valid and binding, notwithstanding the absence of any such delegate, or that any company, corporation, partnership or person may happen to be unrepresented at any meeting of the committee.

Parties hereafter admitted may be represented on the committee.

VI. No company, corporation, partnership or person hereafter admitted a party to the clearing house shall be entitled to be represented on the committee by a delegate, unless the written request to be so admitted shall specify that the party applicant desires to be so represented, and shall specify the mode in which such delegate is to be from time to time appointed and removed, and unless the committee accept this mode of

appointment or removal as a proper one; and the mode so specified for appointing any such delegate shall not be altered without the consent of the committee.

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VII. No person claiming to be a member of the committee under an appointment made after the passing of this act shall be or shall be entitled to act as a member thereof until the committee have resolved that they are satisfied that such member has been duly appointed, and the decision of the committee that such member is duly appointed shall not only be evidence of such due appointment, but shall, until the committee otherwise order, make such person to be a member of the committee, though in fact he is not duly appointed.

Evidence of appointment.

VIII. Members of the committee which at the time of the passing of this act carries on business under the name or style of the Irish Railway Clearing House (in this act designated "the clearing house") in Dawson Street, in the city of Dublin, shall, without any further appointment, be members of the committee under this act.

Committee.

IX. The committee shall meet once a month, and at any other times whereof the secretary shall, at the written request of the chairman for the time being or any two members of the committee, give at least ten days' notice in writing to every company, corporation, partnership and person who may be parties to the clearing house, or to the secretary of every such company and corporation, and every such meeting may be adjourned from time to time as the committee shall think fit; and meetings and adjourned meetings of the committee shall be held at the offices of the clearing house in Dawson Street aforesaid, except when the committee shall have appointed some other place, and then at such other place; and in order to constitute a meeting of the committee there shall be present at least three members, including the chairman; and, except where otherwise provided, all questions at every meeting shall be determined by the majority of votes of the committee present, and in case of an equal division of votes the chairman of the meeting shall have a casting vote in addition to his vote as one of the committee; and notice of the business to be brought before any meeting shall, at least three days before the day of such meeting if the meeting be an ordinary one, and at least ten days before the day of such meeting if it be a special one, be given to every company, corporation, partnership and person who are parties to the clearing house, or the secretary of every such company and corporation.

Meetings of the committee, quorum, &c.

X. Until the first meeting of the committee which shall be held after the passing of this act, Sir Edward McDonnell, or other the chairman of the committee for the time being, shall continue in office; and at the first meeting of the committee which shall be held after the passing of this act, and at the meeting to be held in the month of January in each succeeding year, the members of the committee present at the meeting shall, if they think fit, either continue in office the chairman for the time being, or choose another chairman; and a general meeting of the committee specially summoned shall have power to remove any chairman; and if any chairman shall die or resign or be removed, the committee shall have power as soon as may be to choose some other person to fill the vacancy thereby occasioned; but every chairman elected to supply a vacancy other than at the meeting in the month of January in any year shall continue in office so long only as the person in whose place he shall be so elected would have been entitled to continue if such death, resignation or removal had not happened: Provided always, that it shall not be necessary that the person chosen as chairman be a delegate of any of the companies, corporations, partnerships or persons parties to the clearing house, but in case he shall not be a delegate he shall not be entitled to vote on any question, unless in the case of an equality of votes, when he shall be entitled to give the casting vote.

Appointment of the chairman.

XI. If at any meeting of the committee the chairman shall not be present the members of the committee present shall choose one of their number to be chairman of such meeting.

In the absence of the chairman committee to elect a chairman.

XII. The committee may appoint sub-committees consisting of such number of members of the committee as they think fit, and shall fix the quorum of such sub-committees, and may grant to such sub-committees power to do any acts relating to the affairs of the clearing house which the committee could lawfully do, and may from time to time think proper to entrust to them; and all questions at any meeting of the sub-committees shall be determined by a majority of the votes of members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of such sub-committee: Provided always, that the acts, minutes and proceedings of the sub-committees shall from time to time be submitted to the committee, but all such acts, minutes and proceedings shall be held to be valid, and shall take effect, unless and until they are overruled by the committee.

Sub-committee and meetings thereof.

XIII. At every meeting of any such sub-committee the members thereof present shall appoint one of their number to be chairman of such meeting, who shall be entitled to give one vote as an ordinary member, and in case of an equality of votes shall be entitled to give another vote as the casting vote.

Chairman of sub-committee.

XIV. James Waller Elwin shall be the secretary to the committee until his death or resignation or removal, whichever shall first happen, and the committee shall have the power to remove him and all future secretaries, and in the event of the resignation or

Appointment of secretary.

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As to monies received by committee.

Accounts to be settled and balance ascertained and declared by the committee.

Interest on balances in arrear.

Expenses to be paid out of the funds of the clearing house.

Committee may sue for balances or sums due.

Proof in case of plea of never indebted.

Plea.

Evidence in support of summons, rule, or action.

Parties to the clearing house estopped from denying that they are such parties, or repudiating accounts.

Entries in books.

death or removal as aforesaid of any secretary the committee shall appoint a secretary in his stead.

XV. Any money which shall be received by the committee shall be held by them as trustees for the party or parties to whom the committee shall decide such money to be payable, but no member of the committee shall be answerable for any such money as may be lost or withheld by reason of any cause other than his own personal misconduct.

XVI. The accounts of the clearing house, and the balances due to and from the several parties thereto, shall be settled and adjusted by the secretary to the committee for the time being, which secretary shall also settle and determine the amount to be from time to time contributed to the funds of the clearing house by the parties thereto; and in case of any difference respecting such accounts, the decision of the committee to the effect that any balance or sum is payable by any company, corporation, partnership or person, then or theretofore party to the clearing house, shall be final and conclusive; and so long as any such balance or sum which the committee shall decide to be payable by any party, or any part thereof, shall not be paid, interest shall accrue and be paid on the same at such rate per centum per annum, not exceeding seven pounds per centum, as the committee shall from time to time determine, and such sum or balance, with interest thereon as aforesaid, shall be a debt due to the committee.

XVII. The committee shall, out of the funds of the clearing house, pay all the expenses of the clearing house, and all costs, charges, damages and expenses which the members of the committee or sub-committee, or any or either of them, as such members or member, or which the secretary as nominal plaintiff or defendant, or other party on behalf of the committee, may bear, sustain or be put to; and the members of the committee and secretary shall be completely indemnified and saved harmless out of the funds of the clearing house, and by the parties thereto, of, from and against all actions, suits and proceedings of any sort, costs, charges, damages and expenses to which they or any of them may in any way be subjected as members or member of the committee, or as secretary to the committee, by reason of anything which they or he may *bonâ fide* do or omit to do, whether such deed or omission be within their powers or not.

XVIII. The committee may, by action of debt in the name of their secretary, in any court of competent jurisdiction in Dublin, Westminster or Edinburgh, as the case may be, recover from any company, corporation, partnership or person any balance or sum, with interest thereon, not exceeding the rate of seven pounds per centum per annum, which the committee shall decide to be payable by such company, corporation, partnership or person, whether to any other company, corporation, partnership or person, or on account of the clearing house, and whether such company, corporation, partnership or person be still at the time of such decision or has then ceased to be a party to the clearing house, and whether such sum or balance and interest shall or shall not have been previously ascertained by the secretary to be payable.

XIX. If in any action brought according to this act the defendants shall plead that they never were indebted, or any plea in substance amounting to a denial that the defendants ever were indebted, the plaintiff shall, on issue joined on such plea, be entitled to a verdict, upon proof that the committee decided the sum in question to be payable by the defendants, and that the defendants were either at the time of such decision or at some previous time a party to the clearing house, and in the latter case, upon further proof that such sum was decided to be payable in respect of some transactions, matters, or expenses which happened or were sustained while the defendants were parties to the clearing house.

XX. The defendants in such action may plead any matter showing that they have, since the time of the decision, discharged the sum or balance and interest so decided to be payable, but shall not plead any plea denying the plaintiff to be secretary.

XXI. In support of any action under this act, it shall not be necessary, as part of the opening case, for the applicant or plaintiff to prove otherwise than as hereafter mentioned that the members of the committee were duly appointed, or that the meeting was duly instituted or holden, or that the proceedings were regular, but it shall be sufficient as *prima facie* evidence of those facts respectively to prove that the decision or resolution in question was made at a meeting purporting to be a meeting of the committee.

XXII. On the trial of any action under this act any company, corporation, partnership or person who may have acted as a party to the clearing house shall, upon proof thereof, be estopped from contending that at the time when they so acted they were not a party thereto, and they shall also be precluded from repudiating any accounts adjusted by or authorized to be adjusted by the committee, or the acts of their respective delegates during the time such delegate was a member of the committee.

XXIII. The committee shall cause notes, minutes or copies, as the case may require, of all appointments made or contracts entered into by them, and of the orders and proceedings of all their meetings, to be duly entered in books to be kept by them for that purpose; and every such entry shall be signed by the chairman of the meeting at which such appointments, contracts, orders or proceedings respectively took place, who shall add the word "chairman" to his signature, and which entries may be made and signed either at or after the meetings to which they respectively relate; and every entry pur-

porting to be so signed shall be received as evidence in all courts, and before all judges, justices and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being members of the committee, or of the signature of such chairman, or of the fact of his having been chairman, all which last-mentioned matters shall be presumed till the contrary be proved.

XXIV. On the trial of any such action, after it is proved to the satisfaction of the court or judge trying the cause that such company, corporation, partnership or person is or had once been a party to the clearing house, the books kept by the committee shall be *prima facie* evidence of the truth of the matters therein stated and contained, and such books and all entries therein may be proved by copies, and a certificate that any writing is such a copy subscribed to or endorsed on such writing, and purporting to be signed by the chairman or secretary of the committee, shall be sufficient proof that such writing is a true copy, without proof of the signature or of the official character of the person who signs it, and such copy shall have the same effect in evidence as the originals respectively would have had; and the secretary, although the nominal plaintiff, and the members of the committee, shall be competent witnesses either for the plaintiff or for the defendants.

XXV. The committee to the clearing house may in all cases sue and be sued in the name of the secretary to the committee; and in all proceedings at law and in equity, and in bankruptcy or insolvency, or of any other sort, whether civil or criminal, the name of the secretary may be used instead of the names of the members of the committee and of the parties to the clearing house, and proofs in cases of bankruptcy, insolvency or winding-up affairs may be made by the said secretary.

XXVI. In any indictment or information for any felony or misdemeanor, wherein it shall be necessary to state the ownership of any property whatsoever, whether real or personal, and the same shall either belong to the committee, or be in their custody or in the custody or possession of any officer, clerk or servant to the committee, or of any person employed for the purpose or in the capacity of clerk or servant by the committee, or in or on any building or land used for the purposes of the clearing house, or shall be used or intended to be used for the purposes of the clearing house, it shall be sufficient to state such property to belong to the secretary of the committee.

XXVII. In any indictment for embezzlement wherein it shall be necessary to state the party charged with the embezzlement to have been the clerk or servant of some master or masters, or to have been employed for the purpose or in the capacity of clerk or servant by some master or masters, and such masters shall have been the committee, it shall be sufficient in such indictment to name the secretary of the committee in every place in such indictment where the names of the members of the committee would but for this enactment be required to be inserted.

XXVIII. Every notice or requisition on the business of the clearing house, or given pursuant to this act, shall be sufficient if it be in writing, signed by the secretary of the committee or by the secretary or other officer of the company, corporation, or by the partnership or person giving the same, and if it be sent by the general post addressed to the secretary of the company or corporation, or to the partnership or person for whom the same is intended, or to the secretary, at the office of the clearing house, in case such notice or requisition be intended for the committee; and proof of such notice or requisition being deposited in any public letter box or receiving house for letters intended to be forwarded by the general post shall be deemed proof of the due service of such notice or requisition; and notices or requisitions for each member of the committee shall be sufficient if sent in manner aforesaid addressed to him at his private residence, or at the principal office of the company or corporation, or the place of business of the partnership or person whom he represents.

XXIX. Every writ, summons, intimation or other document in and about all legal proceedings in the name of the secretary to the committee pursuant to this act against any company, corporation, partnership or person who shall be or shall have been a party to the clearing house may be served or given, as the case may be, by forwarding the same by post in a registered letter from the chief post office in Dublin, addressed in the case of a company or corporation to the secretary thereof at the principal office of such company or corporation, and in the case of all other parties to such parties at their respective places of business, and proof of such writ, summons, intimation or other document having been so forwarded shall be deemed proof of the due service thereof.

XXX. In all pleadings or proceedings, civil or criminal, it shall be sufficient to mention the companies, corporations, partnerships and persons who are parties to the clearing house by the description of "the parties to the clearing house mentioned in the Clearing Act (Ireland), 1860," and to describe the committee by the description of "the clearing house committee mentioned in the Clearing Act (Ireland), 1860," instead of stating the names of the individual parties and members.

XXXI. In all cases where the name of the secretary to the committee shall be used under the authority of this act it shall be sufficient to name and describe him, and to state the authority for using his name.

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Books of the committee, or certified copies thereof, to be *prima facie* evidence, and the committee and secretary to be competent witnesses.

Suits to be in the name of the secretary to the committee.

In criminal proceedings property of committee to be deemed the property of secretary.

Criminal proceedings to be prosecuted in the name of secretary.

Service of notices.

Service of writs, &c.

Description of parties to the clearing house and committee in legal proceedings.

Description of the secretary in legal proceedings.

APPENDIX.

Actions, &c. not to abate on death or removal or resignation of secretary.

Power to committee to arbitrate on questions referred to them, or to appoint arbitrators.

Submission to arbitration may be made rule of court.

Expenses of act.

Short title.
Public act.

XXXII. Upon the death or removal or resignation of any secretary no action or suit, or other proceeding pending in his name as plaintiff or defendant, or otherwise, either on behalf of or against the committee, shall abate or be stayed, but as soon as another secretary shall be appointed the name of such new secretary shall be thereafter used, and in an action at law such name shall, whether before or after judgment, be introduced by suggestion, to which no plea or demurrer shall be allowed, and the omission to make such suggestion, and an erroneous suggestion, shall be mere irregularities, and shall, on the application of the committee, or of the party opposed to the committee, be rectified, but shall not otherwise be taken advantage of.

XXXIII. All such companies, corporations, partnerships and persons as are mentioned in the first section of this act, whether parties to the clearing house or not, may agree to refer and may refer to the arbitration of the committee or the said sub-committee, or any arbitrators and umpire to be chosen by or out of the committee, any existing or future differences, questions or other matters whatsoever in which any such companies, corporations, partnerships and persons then are or thereafter shall be mutually interested, and which they might settle or dispose of between themselves, and may delegate to the committee or the said sub-committee, or to the arbitrators and umpire to be chosen by or out of the committee, as the case may be, power to determine all or any of the terms of any contract to be made between the parties to any such reference; and all the powers conferred on railway companies by "The Railway Companies Arbitration Act, 1859," may be exercised by and shall in reference to this act be held to apply to and include all such parties as aforesaid; and all the provisions of the said "Railway Companies Arbitration Act, 1859," with respect to the appointment of arbitrators and umpire, either in the first instance, or to supply vacancies occasioned by death, incapacity, unfitness or failure to act, and whether by the companies or by the Board of Trade, and the powers of arbitrators and umpire, and the proceedings in the arbitration, may be exercised by or in reference to the committee and the said sub-committee, and arbitrators and umpire to be chosen by or out of the committee, as the case may be, on behalf of any such parties as aforesaid; and all the provisions of the last-mentioned act with respect to awards and the costs of the arbitration and awards shall be held applicable to and shall apply to any references to and awards to be made by the committee or the said sub-committee, or any arbitrators or umpire to be chosen by or out of the committee.

XXXIV. The submission to any arbitration in accordance with this act may at any time be made a rule of one of her Majesty's Superior Courts of Record at Dublin on the application of any party interested, and the court may remit the matter to the committee or the said sub-committee, or any arbitrator or arbitrators to be chosen by or out of the committee, with any direction the court think fit.

XXXV. All the costs, charges and expenses of obtaining and passing this act, or incident thereto, shall be paid by the committee out of such moneys as shall come to their hands after the passing of this act, or shall be in their hands at the time of the passing thereof.

XXXVI. This act shall be called "The Clearing Act (Ireland), 1860," and shall be deemed to be a public act, and as such shall be judicially noticed.

23 & 24 VICT. CAP. 97.

An Act for amending and making perpetual the Railways Act (Ireland), 1851.
[13th August, 1860.]

14 & 15 Vict. c. 70.

Whereas it is expedient that "The Railways Act (Ireland), 1851" (t), should be amended as hereinafter provided, and that with such amendments the said act should be made perpetual: be it therefore enacted, by (&c. &c.), as follows:

Periods of notices shortened.

I. The words "twenty-one" shall be substituted for the words "thirty-one" in the eighth section of the said act, and the word "fourteen" shall be substituted for the words "twenty-one" in the ninth section of the same act.

After deposit of draft award company may, upon deposit of such amount as arbitrator may think fit, enter on lands.

II. The twenty-second section of the said act is hereby repealed; and in lieu thereof be it enacted, that when the company are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions in the said act, as amended by this act, it shall be lawful for the company, at any time after the arbitrator shall have framed his draft award, upon depositing in the Bank of Ireland as herein directed such sum or sums as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorized to be purchased or taken by the company, and mentioned in such draft award, or of the several interests in such lands in respect of which no agreement shall have been come to between

(t) Ante, 128.

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the company and the persons entitled thereto, to enter upon and use such lands for the purpose of the railway and works of the company; and the arbitrator shall, upon the request of the company, at any time after he shall have framed such draft award, certify under his hand the sum or sums which in his opinion should be so deposited by the company in respect of any lands mentioned in such draft award, or of any such interests therein as aforesaid, before they enter upon or use the same as aforesaid, and the sum or sums to be so certified shall be the sum or sums set forth in such draft award as payable by the company in respect of such lands or of such interests in such lands in respect of which no agreement shall have been come to between the company and the persons entitled thereto, or such greater amounts as to the arbitrator under the circumstances of the case shall seem proper; and notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the said award, the delivery of certificates, and other proceedings under the said act as amended by this act, and under this act, shall be had and payments made as if such entry and deposit had not been made: provided that the company shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the purchase and compensation money payable by them in respect of any lands so entered upon from the time of their entry until the time of the payment of such purchase money and compensation to the person entitled thereto, or where, under the provisions of the said act as amended by this act, such purchase money or compensation is required to be paid into the said bank, then until the same with such interest is paid into such bank accordingly; and where under this provision interest is payable on any purchase or compensation money, the certificate to be delivered by the company in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

III. The twenty-third section of the said act is hereby repealed; and in lieu thereof be it enacted, that the sum or sums to be deposited as aforesaid in respect of any lands or any interests in any lands shall be paid into the Bank of Ireland in the name and with the privity of the Accountant-General of the Court of Chancery in Ireland, to be placed to his account there, to the credit of the company (describing the company by its proper name), in the matter of "The Railways Act (Ireland), 1851," and of the respective owners of the lands or of the interests in lands in respect of which the same is or are paid as aforesaid, subject to the control or disposition of the said court, and upon such deposit the cashier of the said bank shall give to the company, or the party paying in such money by their direction, a receipt for the same.

Mode of deposit.

IV. The twenty-fourth section of the said act is hereby repealed; and in lieu thereof be it enacted, that the sum or sums of money so deposited as last aforesaid shall remain in the bank by way of security to the parties respectively in respect of whose interests in the lands which shall so have been entered upon such sum or sums shall have been deposited for the payment of the money to become payable by the company to such parties respectively, for their respective interests in such lands under the award of the arbitrator; and the money so deposited may, on application by petition of the company, be ordered to be invested in bank annuities or government securities, and accumulated; and upon such payment as aforesaid by the company it shall be lawful for the Court of Chancery in Ireland, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the company, or in default of such payment as aforesaid by the company, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

Deposit to remain as a security, and to be applied under direction of the Court of Chancery.

V. If part only of the lands charged with any rent-charge or fee-farm rent be required to be taken for the purposes of the special act, the apportionment of any such rent or rent-charge may be settled by agreement between the party entitled to the same and the owner of the lands on the one part and the promoters of the undertaking on the other part, and if such apportionment be not settled by agreement the same shall be settled by the arbitrator; and the owner of the rent-charge or fee-farm rent shall have all the same rights and remedies for the recovery of such apportioned part, as against the lands not required for the purposes of the special act, as previously to such apportionment he had for recovery of the entire.

Apportionment of rent-charge, &c. where part only of the land charged is required.

VI. If any lands shall be comprised in a lease for a life or lives or for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands, and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by the arbitrator, and after such apportionment the lessee of such lands shall as to all future accruing rent be liable only to so much of the rent as shall be apportioned in respect of the lands not required for the purposes of the special act; and as to the land not so required, and as against the lessee, the lessor shall have the same rights and remedies for

Apportionment of rent of lands under lease where part only of such lands is required.

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Costs in case of
traverse.

Acts to be as one
act, and to be
perpetual.

Short title.

the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act, in the same manner as they would have done in case such part only had been included in the lease.

VII. In case upon the trial of any traverse under the provisions of the said act it shall appear that the sum awarded to the traverser by the jury shall be less than the sum awarded by the arbitrator, it shall be lawful for the judge, if he shall think fit, to adjudge that such traverser is not entitled to any costs of such traverse, or that the company is entitled to costs not exceeding the sum of ten pounds against such traverser; and such adjudication of such judge shall be entered in the crown book, and such costs so awarded shall be deducted from the purchase or compensation money payable by the company to such traverser, or shall be recovered from him by distress in like manner as is provided by the fifty-third section of "The Lands Clauses Consolidation Act, 1845"^(u), with respect to costs payable to promoters.

VIII. "The Railways Act (Ireland), 1851," as amended by this act, and this act, shall be read together as one act, and shall be made perpetual, and this act shall be held to be incorporated with that act in any act already or hereafter incorporating that act.

IX. This act may be cited as "The Railways Act (Ireland), 1860."

23 & 24 VICT. CAP. 106.

An Act to amend the Lands Clauses Consolidation Acts (1845) in regard to Sales and Compensation for Land by way of a Rent-charge, Annual Feu Duty or Ground Annual, and to enable Her Majesty's Principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Acts.
[20th August, 1860.]

8 & 9 Vict. c. 18.
Ante, p. 45.

Part of sect. 10 of
recited act re-
pealed.

Sects. 10 and 11 of
recited act, as to
power to sell, &c.
lands for an an-
nual rent-charge,
and to recover,
extended to all
sales, &c. where
parties are under
disability.

Similar proviso
with regard to
lands sold under
sect. 10 of 8 & 9
Vict. c. 19.

Amount of rent-
charge to be set-
tled in manner
directed in the
9th section of
recited acts.

Whereas it is expedient to extend the provisions of the Lands Clauses Consolidation Acts, 1845, in regard to sales of land, or compensation for damages, in consideration of an annual rent-charge, annual feu duty or ground annual, and to enable her Majesty's principal secretary of state for the war department to avail himself of the powers and provisions contained in the same act for the purchase of lands wanted for the service of the war department or for the defence of the realm: Be it enacted, by (&c. &c.), as follows:

I. So much of the tenth section of the Lands Clauses Consolidation Act, 1845, as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed.

II. The power to sell and convey lands in consideration of an annual rent-charge provided by the tenth section of the said act, and the power to recover such rent-charge provided by the eleventh section of the said act, are hereby extended to all cases of sale and purchase or compensation under the said act where the parties interested in such sale or entitled to such compensation are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said act.

III. The power to sell and convey lands in consideration of an annual feu duty or ground annual, under the tenth section of the Lands Clauses Consolidation (Scotland) Act, 1845, and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale or purchase or compensation under the said act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said act.

IV. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rent-charge, annual feu duty or ground annual, hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said acts respectively; provided that the amount of such annual rent-charge, annual feu duty or ground annual, shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands, upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid, by way of compensation for any damage that may be done to the said lands, shall in all such cases be added to and shall form a part of the said rent-charge, annual feu duty or ground annual; and that no fine, foregift, grassum, premium or other consideration in the nature thereof shall be paid or taken in respect of the lands so sold or damaged, other than the annual

(u) Ante, 54.

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rent-charge, annual feu duty or ground annual made payable for such lands: provided also, that such rent-charge shall be and remain upon and for the same uses, trusts and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special act.

V. In case the promoters of the undertaking shall be empowered, by any act or acts relating thereto, to be passed after the passing of this act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this act with any person under the powers of this act and of either of the acts hereinbefore mentioned, or of either of the said acts only, for the purchase of any lands in consideration of the payment of a rent-charge, annual feu duty or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rent-charge, annual feu duty or ground annual, so for the time being payable.

If lands purchased by way of rent-charge, borrowing powers to be reduced proportionally.

VI. The clauses contained in "The Lands Clauses Consolidation Act, 1845," relating to the purchase of lands by agreement, and to agreements for sale, and conveyances, sales and releases of any lands or hereditaments, or any estate or interest therein, by parties under disability, shall extend and be applicable to all purchases of land and hereditaments for public purposes which shall be hereafter made by the council of any city or borough, with the sanction of the commissioners of her Majesty's treasury, under the powers for that purpose contained in "The Municipal Corporation Mortgages, &c. Act, 1860."

Certain clauses in 8 & 9 Vict. c. 18, extended to purchases of land, &c. for public purposes.

VII. For the purchase or acquisition of any messuages, lands, tenements and hereditaments wanted for the service of the admiralty or of the war department or for the defence of the realm, it shall be lawful for her Majesty's principal secretary of state for the war department for the time being to use all or any of the powers and provisions by "The Lands Clauses Consolidation Act, 1845," and by "The Lands Clauses Consolidation (Scotland) Act, 1845," given to promoters of the undertaking, as therein mentioned, and for such purposes the said principal secretary shall be deemed and taken to be the promoters of an undertaking within the meaning of the said act, and all the powers and provisions thereof shall, if used by her Majesty's principal secretary of state for the war department, be treated as if they were contained in the 5th & 6th Vict. c. 94, for the purpose of being used and made available by the principal officers of her Majesty's ordnance, and had been transferred to the said principal secretary for the time being by the 18th & 19th Vict. c. 117, for the purposes aforesaid: provided always, that nothing herein contained shall authorize any purchase otherwise than by agreement of any land, except according to the provisions of the twenty-third section of the said act of the fifth and sixth Victoria, or prejudice or affect the powers and authorities of the said principal secretary for the time being under the said last-mentioned statutes or either of them.

Power to secretary for war to use the powers given to promoters of undertakings by 8 & 9 Vict. c. 18.

VIII. This act shall be read and construed as part of the said "Lands Clauses Consolidation Act, 1845," or of "The Lands Clauses Consolidation (Scotland) Act, 1845," in all matters in which it relates to the said acts respectively; and in citing this act in other acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

This act and 8 & 9 Vict. cc. 18 & 19 to be construed together.

23 & 24 VICT. CAP. 152.

An Act to facilitate internal Communication in Ireland by means of Tramroads or Tramways (v). [28th August, 1860.]

Whereas it would be of great public and local advantage if powers were given to persons desirous to promote the construction of tramways in Ireland to make use for that purpose, under proper control, of public roads, post roads and common highways, where the same can be done without injury to public interests, and to purchase and hold such lands contiguous to such roads and highways, or agreed to be sold by the owners, as shall be found useful and necessary for the completion of such undertakings, and to use such tramways for the conveyance of passengers, produce, minerals, merchandize and other goods, in carriages, waggons and trucks moved by animal power: Be it therefore enacted, by (&c. &c.), as follows:

I. Any persons intending to apply under this act for authority to make and maintain a tramway, which persons are hereinafter called the promoters, shall in the months of April and May, or either of them, immediately preceding the application, publish notice of their intention, by advertisement, according to the regulations contained in Schedule

Notice by advertisement as in Sched. (A.) Part I.

(v) Amended by 24 & 25 Vict. c. 102, post, 166.

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Deposit of plan,
section, &c. as in
Sched. (A.)
Part II.

Notice to owners
of lands as in
Sched. (A.)
Part III.

Deposit of me-
morial and esti-
mate, and lists as
in Sched. (A.)
Part IV.

Preliminary in-
quiry by grand
jury at summer
assizes.

Tramway not
wholly in one
county.

(A.) to this Act, Part I.: provided always, that it shall not be competent to make application for a tramway or tramways under the provisions of this act to unite places between which statutory powers for making a railway or railways for directly connecting the same shall have been granted and be in force.

II. On or before the first day of May in the same year, the promoters shall deposit with the secretary of the grand jury of any county within which the tramway is proposed to be made—

1. A copy of the advertisement published by them;
2. A published map to a scale of not less than a quarter of an inch to a mile, with the line of the proposed tramway delineated thereon, so as to show its general course and direction;
3. A plan, book of reference and section, prepared according to the regulations contained in Schedule (A.) to this act, Part II.;

and with the county surveyor and the clerk of each union through which the tramway is proposed to be made a copy of each of the same documents.

III. On or before the second day of the same month of May, the promoters shall give to the owners or reputed owners, lessees or reputed lessees, and occupiers, of all lands which the promoters intend to apply for power to take, notice of their intention, according to the regulations contained in Schedule (A.) to this act, Part III.

IV. On or before the twelfth day of the same month of May, the promoters shall deposit with the secretary of the said grand jury—

1. A memorial of the promoters, signed by them or some or one of them, addressed to the lord lieutenant in council, praying for an order in council authorizing the making of the tramway, with a draft of the proposed order scheduled to the memorial;
2. An estimate of the expense of the undertaking, signed by the person making the same;
3. Lists of the owners and others to whom the promoters have given such notice as is hereinbefore required, prepared according to the regulations contained in Schedule (A.) to this act, Part IV.;

and with the county surveyor a duplicate of each of the same documents.

V. At the summer assizes of the same year the said grand jury shall, on the application of the promoters, inquire whether or not the requirements contained in the foregoing enactments have been complied with (for which purpose they shall have power to summon witnesses, and require the production of documents, and take evidence on oath or otherwise), and shall hear any person interested in contending that such requirements have not been complied with who shall lodge with the secretary of the grand jury a memorial complaining of non-compliance in some particular specifically stated in such memorial, and shall then proceed to inquire generally into the *primâ facie* merits of the undertaking. With reference thereto the grand jury shall take into consideration the report of the county surveyor on the undertaking (who is hereby required to make a report thereon to the grand jury, and to deliver a copy thereof to the promoters three clear days at least before the inquiry by the grand jury), and shall hear in opposition to the application any owner, lessee or occupier of any lands proposed to be taken for the purposes of the undertaking, or alleged to be injuriously affected thereby, and any railway or other company or person desiring to be heard in opposition on the ground of competition, or any part of whose rails, trams, stations, works or accommodations is proposed to be taken or in any manner used or interfered with for the purposes of the undertaking, and the inhabitants of any town, place or district alleged to be injuriously affected by the undertaking. The grand jury shall then approve *provisionally* (x) or disapprove, as they may think fit, of the undertaking, with or without modification, having regard to the compliance or non-compliance of the promoters with the requirements aforesaid, and to the *primâ facie* merits of the undertaking, in engineering, financial and other respects; and such *provisional* approval or such disapproval (with, in case of disapproval, the grounds thereof), shall be certified in writing under the hand of the secretary of the grand jury; and in all cases where the proposed undertaking is *provisionally* approved of by any grand jury or grand juries, it shall be lawful for any railway company or owner of land who may have opposed the application for the same, to appeal against any such *provisional* approval to the lord lieutenant in council, who shall, as soon as may be, inquire into the grounds of such *provisional* approval, and allow or disallow the appeal.

VI. Where the proposed tramway does not lie wholly within one county, the foregoing enactments shall apply equally to every county within which any part of it lies, except that the promoters may, if they think fit, deposit with the secretary of the grand jury, and the surveyor of any county, and the clerk of any union, such plan, book of reference, section, estimate and lists only as relate to so much of the proposed tramway as lies within that particular county.

(x) One approval by the grand jury is not sufficient, 24 & 25 Vict. c. 102, s. 2, post, 166. And see that statute as to notices and traverse of approval.

VII. Where the proposed tramway does not lie wholly within one county, and the undertaking is provisionally approved of by any one of the grand juries before whom the application comes, but is disapproved of by any other or others of such grand juries, it shall be lawful for the promoters to appeal against such disapproval to the lord lieutenant in council, who shall, as soon as may be, inquire into the grounds of disapproval, and allow or disallow the appeal.

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Appeal to lord lieutenant in council against disapproval.

VIII. Where the proposed tramway lies wholly within one county, and the grand jury of that county disapproves of the undertaking, and also where the proposed tramway does not lie wholly within one county, and either the grand juries of all the several counties disapprove of the undertaking, or any one of them disapproves of it, and no appeal is brought against such disapproval, or any appeal brought is disallowed, then and in every such case the application of the promoters shall be deemed to have wholly failed.

On disapproval, &c., application deemed to have failed.

IX. In every other case the commissioners of public works, hereinafter called the Board of Works, as soon as may be *after* such *provisional approval* (y) or such allowance of appeal as aforesaid, on the application of the promoters, and on being furnished by them with duplicates of all such plans and other documents as are hereinbefore required to be deposited, and with all such other plans and documents and all such other information as the Board of Works may require, shall, by such fit persons or person as they shall appoint for the purpose, make public inquiry concerning the merits of the undertaking (to be held on or near some part of the lands proposed to be taken for the tramway, and according to the regulations contained in Schedule (A.) to this act, Part V.), and shall report their opinion thereon, and by such report recommend, if they think fit, any such modification of the undertaking, in an engineering or financial or other respect, as may seem to them of public or local advantage.

On approval, local public inquiry by Board of Works as in Sched. (A.) Part V.

X. At the spring assizes next after the said summer assizes the grand jury of each county within which any part of the proposed tramway lies, shall, on the application of the promoters, take into consideration the report of the Board of Works, and also the further report of the county surveyor on the undertaking (who is hereby required to make a further report thereon to the grand jury, and to deliver a copy thereof to the promoters three clear days at least before the inquiry by the grand jury), and shall hear in opposition to the application any such owner, lessee, occupier, company, person or inhabitants as aforesaid. The grand jury shall then definitively approve or disapprove, as they may think fit, of the undertaking, with or without modification, having regard to the merits of the undertaking in engineering, financial and other respects, which definitive approval or disapproval (with, in case of disapproval, the grounds thereof) shall be certified in writing under the hand of the secretary of the grand jury.

At spring assizes definitive approval or disapproval.

XI. On the conclusion of such proceedings at the spring assizes, the promoters shall have the like right of appeal as is hereinbefore given to them in respect of proceedings at the summer assizes, and on definitive disapproval or on disallowance of appeal (as the case may be) the application of the promoters shall be deemed to have wholly failed.

Appeal, &c. as before.

XII. On the promoters bringing an appeal they shall give notice thereof by advertisement inserted in the Dublin Gazette and in the same newspaper or newspapers in which the advertisement required by Section I. of this act was inserted by them. On any such appeal the lord lieutenant in council shall, as far as may be requisite, take into consideration all such reports and documents and other things relative to the undertaking as were before the grand jury whose disapproval is appealed from, and shall hear in opposition to the appeal any such owner, lessee, occupier, company, person or inhabitants as aforesaid.

Notice, &c. of appeal.

XIII. Where the undertaking is definitively approved of by the only grand jury or by all the grand juries before whom the application comes, or all appeals against the disapproval of it are allowed, then and in every such case the lord lieutenant in council shall settle and make an order in council, authorizing the making and maintaining of the tramway, subject and according to the provisions of this act, by such persons or person or body corporate or company, in such manner, subject to such restrictions and provisions, and on such terms and conditions as shall be therein specified.

On definitive approval, lord lieutenant in council to make order.

XIV. Thereupon, and on the promoters doing everything required to be done by them by any provision for securing the completion of the tramway applicable in their case, the lord lieutenant in council shall, as soon as conveniently may be, procure all necessary steps to be taken for the confirmation of such order in council by act of parliament, and until such confirmation the order shall have no effect whatever (z). The bill for any such act shall be introduced on or before the first of June, and treated in all respects as a public bill. The order to be confirmed by the bill shall be specified in a schedule to it, but shall not be set out at length therein. The promoters shall deposit, for the use of the members of the houses of Parliament respectively, so many copies of the order in such

Order to be confirmed by act of parliament.

(y) This inquiry now takes place in the first instance, 24 & 25 Vict. c. 102, s. 6, and see s. 7, post, 167.

in council is now valid without confirmation by Parliament, 24 & 25 Vict. c. 102, s. 9, post, 167.

(z) Where there is no appeal, the order

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If desired by promoters, company to be constituted by the order.

Order to prescribe capital, &c.

Order may empower company to borrow, under restrictions.

Order to prescribe for management &c. of company.

Railways Clauses Consolidation Act and others incorporated with order in council.

Construction of incorporated acts with order in council.

Plan and section of authorized alterations to be deposited before tramway is begun.

Plan and section furnished to Board of Works to be sufficient for purposes of 14 & 15 Vict. c. 70.

offices of the houses respectively as the clerk of the Parliaments and the Speaker of the House of Commons respectively may from time to time direct.

XV. Where the promoters desire that a joint stock company shall be constituted for the execution of the undertaking, the order authorizing the making of the tramway shall contain proper provisions, with apt terms, for uniting into a company for that purpose such persons as shall be named or referred to therein, being subscribers to the undertaking, and for incorporating them into a company by an appropriate name, with perpetual succession and a common seal, and with power to purchase and hold land for the purpose of the undertaking, subject and according to the restrictions of this act and of the order (z).

XVI. Every such order shall prescribe the amount of the share capital of the company (the same and every part thereof to be applied only in carrying into execution the objects and purposes of the order), the number of the shares into which the capital shall be divided, the amount of each share, the amount and intervals of calls, and the maximum aggregate amount to be called within a certain time.

XVII. Any such order may (where it seems to the lord lieutenant in council expedient) empower the company to borrow on mortgage or bond such money as in the order shall be specified (the same and every part thereof to be applied only in carrying into execution the objects and purposes of the order), and may provide, in such manner as may seem fit, for the payment of interest on and the discharge of the principal money borrowed, and for the appointment of a receiver on behalf of mortgagees: provided always, that no such order shall empower the company to borrow more money in the whole than one-third of the amount of their share capital, or to borrow any money whatever until the whole of their share capital is subscribed for, and one-half of it is actually paid up, and they prove to the justice who is to certify, under the provisions contained in the fortieth section of "The Companies Clauses Consolidation Act, 1845," that all such capital has been subscribed for *bonâ fide*, and is held by subscribers or their assigns, and for which such subscribers or their assigns are legally liable.

XVIII. Every such order shall prescribe the time within which the first general meeting of the shareholders shall be held, and may prescribe or provide for any such thing relating to the constitution, management, rights, powers or duties of the company as is ordinarily prescribed or provided for in a special act authorizing the construction of a railway and incorporating a company for that purpose.

XIX. Every such company, and no other, shall be deemed to be a tramway company within the meaning of this act, and (subject to the other provisions of this act) the Companies Clauses Consolidation Act, 1845 (a), shall apply to every tramway company, and shall be incorporated with the order constituting it, and (subject as aforesaid) the Lands Clauses Consolidation Act, 1845 (b), the Railways Clauses Consolidation Act, 1845 (c), and the Railways Act (Ireland), 1851 (d), shall apply to every tramway authorized by any order (whether a tramway company is thereby constituted or not), and shall be incorporated with every such order.

XX. In the construction of the said acts in connexion with any such order—

The expression "the special act" used in the said acts, shall be taken to mean or apply to any such order as and when confirmed by act of Parliament;

The expressions "the undertaking" and "the railway," used in the said acts, shall be respectively taken to mean or apply to the tramway and works by such order authorized;

The expression "the Company," used in the said acts, shall be taken to mean, as to the Companies Clauses Consolidation Act, 1845, a tramway company, and as to the said other acts, the persons or person or body corporate or company authorized by any such order to make a tramway;

and the said acts shall be read as if the Board of Works were therein named instead of "The Board of Trade," and as if Dublin were therein named instead of London.

XXI. It shall not be lawful for the persons authorized to make a tramway under this act to begin to make the same without first depositing in like manner as a plan and a section are hereinbefore required to be deposited a plan and a section (prepared in like manner as the original plan and section) of all such alterations from the original plan and section as shall be authorized by the order in council, and without also first furnishing a duplicate thereof to the Board of Works.

XXII. For the purposes of the application of the Railways Act (Ireland), 1851 (d), to a tramway under this act, any map, plan, book of reference, and section furnished to the Board of Works under this act shall be sufficient, and the same shall be used and proceeded on in lieu of the maps or plans and schedules of lands, works and names by the last-mentioned act required. Such estimates, and such draft award, and copies thereof and of parts thereof, as are by the same act required, shall be deposited in like manner as plans and

(z) See further, 24 & 25 Vict. c. 102, s. 8, post, 167.

(a) 8 & 9 Vict. c. 16, ante, p. 24.

(b) 8 & 9 Vict. c. 18, ante, p. 45.

(c) 8 & 9 Vict. c. 20, ante, p. 73.

(d) 14 & 15 Vict. c. 70, ante, p. 128.

other documents are hereinbefore required to be deposited, and not otherwise, and the terms of notice of deposit to be published under that act shall be altered accordingly.

XXIII. The provisions of the said acts directing deposits to be made with clerks of the peace (except the provisions relative to access to the special act) and with clerks of poor law unions and postmasters, and the provisions with respect to the crossing of roads and other interferences therewith (other than the provisions of the Railways Clauses Consolidation Act, 1845, sects. 65, 66, 67) (*e*), and the provisions with respect to the use of locomotive engines or other moving power, not being animal power, shall be excepted out of the incorporation hereinbefore made; and it shall be lawful for the lord lieutenant in council, in and by any such order, if the circumstances of the case appear so to require, to vary or except any of the provisions of any of the said acts.

XXIV. Every tramway made under this act shall be worked by animal power only, and shall (unless in any case the order in council otherwise provides) be constructed with iron rails or trams, and on the gauge of five feet three inches. Any such tramway may be authorized to be constructed wholly or partly along or across any post road, road now or formerly a turnpike road, public highway, street, square, market place, court, lane, alley, bridge or quay, or other public thoroughfare, passage or place whatsoever, on the level.

XXV. Any such order in council may prescribe the maximum tolls and rates of charge to be taken and made for passengers, animals and things conveyed on the tramway, not exceeding the tolls and rates of charge specified in Schedule (B.) to this act, and may make regulations for the calculation and charging thereof; and in the absence in any case of any special provisions for those purposes, or so far as any such special provisions shall not extend, the maximum tolls and rates of charge, and the regulations, shall be those specified in the same schedule.

XXVI. It shall be lawful for the lord lieutenant in council, on the like proceedings and inquiry as are hereinbefore specified being taken and made, to make an order authorizing the varying, extending or enlarging of any tramway already authorized, and the maintenance of the tramway, as and when so varied, extended or enlarged. No such order shall have any effect until confirmed by an act of parliament, proceedings for the obtaining of which shall be taken in manner hereinbefore provided with respect to an original order for the making of a tramway.

XXVII. It shall be lawful for the lord lieutenant in council, by order, when the circumstances of any case appear to render it expedient, to extend the time limited for the completion of a tramway, or to authorize the abandonment of all or any part of a tramway: provided always, that it shall not be lawful for the lord lieutenant in council to make any such order without notice being given to the owners or reputed owners, lessees or reputed lessees, and occupiers of the lands in which the work or the part thereof intended to be abandoned is situate, or without notice being given to such other persons or authorities as the lord lieutenant in council may think fit, or without hearing any person or authority concerned and desiring to be heard. No such order shall have any effect until confirmed by an act of Parliament, proceedings for the obtaining of which shall be taken in manner hereinbefore provided with respect to an original order for the making of a tramway.

XXVIII. Provided always, that any order in council authorizing the abandonment of a tramway, or any part thereof, shall be made and take effect subject to the following restrictions and conditions:

1. The order shall contain such provisions as may appear expedient for compelling the owners of the tramway to make good any damage that may have been caused to any post road, turnpike road, public highway, street, square, market place, court, lane, alley, bridge or quay, or other public thoroughfare, passage or place, by or in consequence of the making of the tramway, or of the part thereof authorized to be abandoned (as the case may be):
2. If, on the application for the order, it is shown to the lord lieutenant in council that all or any lands acquired by the owners of the tramway for the purposes thereof, or of the part thereof authorized to be abandoned (as the case may be), may with advantage be dedicated for highway purposes to the use of the public, and to that end be placed under the control of the grand jury, municipal corporation, body of commissioners, or other body having the control of the public roads in the county, city, borough, town corporate, place, or district where the lands are situate, the order in council shall contain such provisions in that behalf as may appear expedient:
3. In the absence of any such provisions, and so far as all or any such provisions shall not extend, the lands acquired by the owners of the tramway for the purposes thereof, or of the part thereof authorized to be abandoned (as the case may be), shall go to and vest in the person or persons from whom the same were acquired, his or their respective heirs, successors, executors, administrators or assigns (according to the tenure of the lands), discharged from all estates, interests and claims of the owners of the tramway, or any person claiming under them, and as if any order authorizing the making of the tramway had never been made or confirmed, or as near thereto as circumstances will admit.

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Some provisions of incorporated acts excepted.

Construction and gauge.

Maximum tolls and rates of charge, with regulations in Sched. (B.)

Tramway may be varied, enlarged, &c.

Time for completion may be extended, or abandonment may be authorized.

On abandonment, damage to be made good, and land taken to be used for highway purposes, or to go back to original owner.

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Deposit as security for completion by a company.

XXIX. Where the promoters are not an existing tramway company, and a tramway company is constituted by the order in council authorizing the undertaking, and also where the promoters are an existing tramway company, but are not possessed of a tramway actually open for traffic, then and in every such case the promoters shall give security for the completion of the proposed tramway, as follows:

1. Within forty-eight hours after the making of the order they shall, with the privity of the accountant-general of the Court of Chancery, either pay in his name into the Bank of Ireland a sum of money equal to one-twentieth part of the estimated cost of the undertaking, or deposit in his name in the Bank of Ireland, or transfer into his name there, exchequer bills or other government securities equivalent to that sum at the price at which such bills or securities were originally purchased by the promoters (to be proved by the broker's certificate of such purchase):
2. Before making any such payment, deposit or transfer, they shall obtain from the clerk of her Majesty's Privy Council in Ireland, a warrant under his hand authorizing the same, and stating the title of the account to which such money, bills or securities, shall be placed, which warrant shall be sufficient authority to the said accountant-general for permitting such payment, deposit or transfer: provided always, that in case of the accountant-general's office being closed at the time when any such payment, deposit or transfer is required, the same may be made and shall be received and acted on by the Bank of Ireland without his actual privity:
3. The Court of Chancery, on the petition in a summary way of the persons or person making such payment, deposit or transfer, or the majority of such persons, or the survivors or survivor of them, hereinafter called the depositors or depositor, may order that any money so paid, or any interest or dividend accrued on any bills or securities so deposited or transferred, be invested in any such securities as the depositors or depositor may desire and the court approve:
4. In the following cases, and not otherwise, the Court of Chancery, on the petition in a summary way of the depositors or depositor, shall order the money, bills or securities, so paid, deposited or transferred, and any securities in which any investment may be made as aforesaid, and any interest or dividend accrued thereon respectively, to be paid or transferred to or into the names or name of the depositors or depositor; namely,
 - (1.) If an act of Parliament confirming the order in council with respect to which such payment, deposit or transfer is made, does not pass in the session current at the date of the order, or, if Parliament be not then sitting, then in the session beginning next after that date:
 - (2.) If such an act does so pass, and within the time limited for the completion of the tramway the company open it for traffic, or prove to the Board of Works that they have paid up one half of their share capital, and have expended for the purposes of the order a sum equal to such half, or else execute a bond in twice the amount paid into the bank, or represented by the deposit or transfer aforesaid, conditioned for payment to her Majesty, her heirs or successors, of that amount, in the event of their failing either to open the tramway for traffic, or to give such proof as aforesaid, within the time limited for the completion of the tramway (such bond to be prepared to the satisfaction of and deposited with the Board of Works, and to be made with a surety or sureties approved of by the Board of Works):
5. If an act confirming the order passes as aforesaid, and the time limited for completion of the tramway expires before it is opened for traffic, or before such proof as aforesaid is given, then the money, bills or securities paid, deposited or transferred, and any securities in which any investment may have been made as aforesaid, and any interest or dividend accrued thereon respectively, or the monies secured by any bond given as aforesaid (as the case may be), shall, immediately on the expiration of the time so limited, be forfeited to her Majesty, and be paid or transferred, by the officer or person in whose name the same shall then be standing, or by whom the same may be recovered and received, to the account of her Majesty's exchequer, and shall then be carried to and form part of the consolidated fund of the United Kingdom:
6. The certificate of the Board of Works that a confirming act of Parliament has or has not passed as aforesaid, or that the tramway has or has not been opened for traffic, or that such proof or such bond as aforesaid has or has not been given, shall be conclusive evidence thereof.

Deposit, where time extended.

XXX. Where an order in council authorizes an existing tramway company, being possessed of a tramway actually open for traffic, to make another tramway, or extends the time limited for the completion by a tramway company of their tramway, then and in every such case the order shall provide that after the expiration of a time thereby limited (not exceeding in the former case five, and in the latter case three years from the passing of the confirming act) the payment of dividend on the company's ordinary capital shall be suspended until the tramway to which the order relates is opened for traffic.

XXXI. Where the provisions of either of the two last preceding sections are not applicable, the lord lieutenant in council shall make such other provision as may seem fit for securing the completion of the tramway within the time limited.

XXXII. All costs, charges and expenses necessarily incurred in connection with the making of any such order in council, or any proceeding preliminary thereto, shall be paid by the promoters, and all other costs, charges and expenses shall be in the discretion of the lord lieutenant in council.

XXXIII. For the purposes of any application made or intended to be made under this act, it shall be lawful for the county surveyor, his assistants, servants and workmen, and also for the promoters, their engineers, surveyors, agents, servants and workmen, at all reasonable times, and causing as little inconvenience as may be, to enter on any lands in or near the line of the proposed tramway (not being lands which cannot be authorized to be taken under this act for the purposes of a tramway, without the consent in writing of the owner thereof), and to survey or otherwise examine the same, and to dig or bore therein; provided that he or they first obtain authority so to do in writing under the hand of a justice of the peace at petty sessions in and for the district where the lands are situate, such justice not having any pecuniary interest in the undertaking. The promoters shall also make full compensation for any damage caused under this provision, the amount of such compensation to be fixed by two or more justices of the peace at petty sessions in and for the same district (whose order shall be conclusive), and to be recovered as any compensation money for lands taken by the promoters is recoverable.

XXXIV. No deposit required by this act shall be of any effect if made on a Sunday; and any deposit made after eight o'clock in the evening of any week day but Saturday shall be deemed to be made on the following day, and if made after that hour on a Saturday shall be deemed to be made on the following Monday.

XXXV. The secretary of a grand jury and clerk of union shall make a memorandum in writing on every document deposited with him under this act, showing the time of deposit, and shall permit any person to inspect and examine the same at all reasonable hours and during a reasonable time, and to make copies of or extracts from it.

XXXVI. Everything required to be done under this act by the grand jury of a county shall be deemed to be a part of their fiscal business; and all enactments for the time being in force respecting the fiscal concerns of a county, or the fiscal business to be transacted by a grand jury, before or at any assizes, shall apply to everything done by a grand jury under this act, so far as the same enactments shall be applicable thereto.

XXXVII. With respect to the county of Dublin and the county of the city of Dublin, for the purposes of this act, two successive presenting terms for those counties respectively shall be in the place of the summer and spring assizes for other counties, and the times at which notices shall be given, deposits made, and other proceedings taken shall be from time to time regulated by general rules made in manner hereinafter provided.

XXXVIII. Where a proposed tramway lies wholly or partly in a city, borough, or town corporate, or other place or district in which the public roads are not under the control of the grand jury of the county within which such city, borough, town corporate, place, or district is locally situate, then and in every such case, for the purposes of this act, the grand jury of the county of the city or county of the town, municipal corporation, town or other commissioners having the control of the public roads in such city, borough, town corporate, place, or district, or other body having such control, or in case all such public roads are not under the control of any one such body then each such body as to the public roads under its control, shall be in the place of the grand jury of the county, with all the like rights, powers, and duties; and the secretary, town clerk, clerk, or other like officer of any such body shall be in the place of the secretary of the grand jury of a county, with all the like rights, powers, and duties; and (except as to the county of the city of Dublin which is hereinbefore provided for) meetings of each such body shall be held for the purposes of this act at times as nearly as may be corresponding with the respective times of the summer and spring assizes for the county within which such city, borough, town corporate, place, or district is locally situate:

Provided always, that the power of any such body (including the municipal corporation of the city of Dublin) to approve or disapprove of any undertaking shall be subject to the following restrictions:

1. Such approval or disapproval shall have no effect unless it is determined on by a majority of not less than two thirds of such members of the body as shall be present at a meeting of the body specially summoned by notice in writing, specifying the time and place and object of the meeting, delivered at the usual or last known place of abode of each member of the body seven clear days at least before the day of the meeting:
2. Any five members of the body dissenting from the approval of any undertaking may, within one month after such approval, appeal against the same to the lord lieutenant in council, and on any such appeal being brought such notice shall be given by advertisement or otherwise, and such persons shall be heard in support of and in opposition to the appeal, as shall be from time to time directed by general rules made in manner hereinafter provided:

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In other cases other security for completion to be taken.

Expenses to be paid by promoters.

Power to promoters and county surveyor to enter and survey.

Rules as to deposits.

Secretary of grand jury, &c. to permit inspection, &c.

Proceedings of grand jury to be part of fiscal business.

Counties of Dublin and of city of Dublin.

Tramway in city or town.

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As to altering level of streets when tramways pass through towns.

Persons interested in tramways not to vote, but not to be disqualified.

Promoters of tramways on tidal lands to deposit map at the Admiralty.

Lands not to be taken without owner's consent, except lands adjoining to public roads.

Demesnes, &c. not to be taken without owner's consent.

Owners of sewers, &c. not to be impeded from access.

Lord lieutenant in council may make general rules for execution of this act.

Provided also, that where in any such city, borough, town corporate, place, or district the public roads or any of them shall, by virtue of any special agreement or by usage or otherwise, be in fact under the control of a body not being the body in law having or entitled to have such control, then and in every such case, for the purposes of this act, the body in fact having such control shall be deemed to be the body to which the present provision applies.

XXXIX. Where any tramway shall be made through any city or town, it shall not be lawful to alter the level of any street therein without the consent of two thirds of the owners of the houses adjoining the same, or in such a manner as to prevent convenient access to all the houses adjoining such street, and in no case shall the level be altered more than four feet; and when any street shall be so raised or sunk, the whole of the surface of the roadway of such street shall be brought by the promoters to the same level, unless it shall appear to the Board of Works that such alteration is objectionable.

XL. If any member of a grand jury, municipal corporation, or body of commissioners, or other body having the control of the public roads in any county, city, borough, town corporate, place or district, shall be also the promoter or owner or one of the promoters or owners, or a member or shareholder of a tramway company being the owners, of a tramway lying wholly or in part within such county, city, borough, town corporate, place or district, it shall not be lawful for him to vote on or otherwise act in relation to any question directly or indirectly concerning such tramway or tramway company; but no member or shareholder of a tramway company shall be disqualified from being a member of any such municipal corporation, body of commissioners, or other body as aforesaid by reason of any contract entered into between the tramway company and such municipal corporation, body of commissioners, or other body: provided always, that nothing hereinbefore contained shall be deemed to render invalid any resolution or act of a grand jury, municipal corporation, body of commissioners, or other body as aforesaid on or in relation to which any person shall be found to have voted or acted contrary to this enactment.

XLI. Where any part of a tramway is proposed to be made on tidal lands within the flow of ordinary spring tides, the promoters shall, on or before the first day of May in the year in which their application is begun, deposit with the secretary of the lord high admiral of the United Kingdom, or the commissioners for executing the office of lord high admiral, a copy of so much of the plan and section aforesaid as relates to such tidal lands. The Board of Works, in the course of their public inquiry, shall inquire whether or not the last-mentioned requirement has been complied with, and shall take into consideration any communication that the lord high admiral or commissioners may think fit to make to the Board of Works respecting such tidal lands, and shall in their report respecting the undertaking refer to such communication, and state any recommendation that they may think fit to make in consequence thereof. The Preliminary Inquiries Act, 1851 (*a*), shall apply, *mutatis mutandis*, in respect of any application for an order in council under this act, as if the same were an application to Parliament for such a bill as is in that act mentioned.

XLII. Nothing in this act, or in any order under it, shall be deemed to authorize any lands to be taken for the purposes of the undertaking without the consent in writing of the owner thereof, except such lands as may be not more than thirty feet distant at any point on a line drawn horizontally from the centre of some post road, turnpike road, public highway, bridge, or quay.

XLIII. Nothing in this act, or in any order under it, shall be deemed to authorize to be taken for the purposes of the undertaking any mansion house, or house wholly built of stone or brick, with lime, or any of the outbuildings or offices thereof, or any part of any yard, haggard, garden, orchard, or plantation attached or belonging thereto, or any part of any deer park or other park or demesne, or planted or ornamental walk, drive, approach, or avenue, or of any ground ornamentally planted, or of any lawn or bleach green, without the consent in writing of the owner thereof respectively, although the same may lie within such limited distance as in the last preceding section is mentioned.

XLIV. Nothing in this act, or in any order under it, shall be deemed to empower the owners or promoters of a tramway to impede, at any time, the owners of any sewer, drain, main, or pipe from having access to the same for the purpose of cleansing, repairing, removing, adding to, or amending it, or to give the owners or promoters of a tramway any claim for compensation or damages for or by reason of any unavoidable injury to or for any temporary stoppage of the tramway that may be necessary for or in the execution of any such cleansing, repair, removal, addition, or amendment.

XLV. It shall be lawful for the lord lieutenant in council, by order, to make from time to time such general rules as may seem fit for the effectual execution of this act, and the regulation of the procedure on appeals, and on inquiries by the Board of Works, and generally of all proceedings under this act, and also for fixing the amount of any fees, and the allowance, taxation, and payment of any costs, charges, and expenses to be taken, allowed, and paid under this act, and for the remuneration of any county surveyor, engineer, surveyor, or other person employed in the execution of this act under the

(a) Ante, 126.

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direction or authority of a grand jury or of the Board of Works or otherwise, and from time to time to revoke or amend any such rules; but no such rules shall have any effect until the expiration of one month after the same shall have been published in the Dublin Gazette, and laid before both houses of Parliament.

XLVI. The acts specified in Schedule (C.) to this act shall, as far as circumstances will admit, and as far as those acts are not inconsistent with this act, apply to tramways under this act. For the purposes of those acts, a tramway under this act shall be deemed to be a railway (although the moving power is animal only), and the word "company" in any of those acts shall be deemed to mean the owners of a tramway under this act (whether a company or not), and the Board of Works shall be deemed to be in the place of the lords of the committee of her Majesty's Privy Council appointed for trade and foreign plantations, and with respect to the constabulary, the inspector-general of constabulary shall be deemed to be in the place of the secretary-at-war, in any of those acts mentioned: provided always, that with respect to tramways under this act, such rates of speed as the Board of Works may from time to time direct shall be deemed to be substituted in sections VI. and XI. of the act fourthly in the same schedule specified for the rates therein respectively mentioned or referred to.

General railways acts in Sched. (C.) to apply to tramways.

XLVII. Nothing in this act, or in any order under it, shall be deemed to exempt any tramway from the provisions of any future general act relating to tramways or tramway companies, or their accounts, or from any future revision or alteration, under authority of Parliament, of the maximum tolls or rates of charge authorized by this Act, or any order under it.

Tramways not exempted from future general acts.

XLVIII. Provided always, that if at any time it shall appear to the lord lieutenant in council to be expedient that any provision that may be hereafter adopted in the standing orders of either house of Parliament relative to private bills should be applied to tramways or proceedings under this act, it shall be lawful for the lord lieutenant in council, by order, to apply such provision accordingly in such manner as may seem fit, notwithstanding that the same may be inconsistent with any of the regulations contained in the schedules to this act, and from time to time to revoke or amend any such order; but no such order shall have any effect until the expiration of one month after the same shall have been published in the Dublin Gazette, and laid before both houses of Parliament.

Order in council may apply amended standing orders.

XLIX. In this act—

The expression "the lord lieutenant in council" means the lord lieutenant or other chief governor or governors of Ireland for the time being, by and with the advice of her Majesty's Privy Council in Ireland;

Interpretation of terms.

The word "county" includes any riding or division of a county for which riding or division separate assizes are held, but not a county of a city or county of a town;

The word "lands" includes lands, houses, buildings and hereditaments of any tenure;

The word "owner," used with reference to lands, means any person who, under the provisions of any order in council made under this act, is enabled to sell and convey lands to the owners of a tramway;

And the words "persons" and "person" shall (unless there be something repugnant in the subject or context) be construed to include a body corporate or a company.

L. This act shall extend to Ireland only, and may be cited as "The Tramways (Ireland) Act, 1860."

Extent of act. Short title.

SCHEDULE (A.)

PART I.

Notices by Advertisement.

1. Every advertisement shall state—

(1.) The objects of the intended application;

(2.) The description of the termini, with the names of the parishes, townlands, townships and extra-parochial places from, through or into which the tramway is intended to be made;

(3.) The times and places at which the deposit required by section II. of this act will be made;

(4.) The intention of the promoters (if they intend) to apply for powers for the compulsory purchase of lands.

2. The whole notice shall be included in one advertisement, which shall be headed with a short title descriptive of the undertaking.

3. The advertisement shall be inserted in three successive weeks in some one and the same newspaper of the county in which the lands to which the application relates are situate, or if there be none, then in a newspaper of some adjoining or neighbouring county. Where the application relates to lands situate in more than one county, the advertisement shall be inserted once in each of three successive weeks in a newspaper published at least twice a week in Dublin, and in a newspaper of the county in which

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is the principal office of the promoters, and in a newspaper of every county in which any new work is proposed to be executed, or in which any lands are situate in respect of which any new or further powers for the completion of works already authorized are intended to be applied for.

4. The advertisement shall in all cases be also inserted once in the Dublin Gazette.

PART II.

Form in which Plans, Books of Reference, Sections and Cross Sections, shall be prepared.

Plan.

1. Every plan required to be deposited shall be drawn to a scale of not less than four inches to a mile, and shall describe the line or situation of the whole of the work (no alternative line or work being in any case permitted), and the lands in or through which it is to be made, maintained, varied, extended or enlarged, or through which every communication to or from the work shall be made; and where it is the intention of the parties to apply for powers to make any lateral deviation from the line of the proposed work, the limits of such deviation shall be defined upon the plan, and all lands included within such limits shall be marked thereon; and unless the whole of such plan shall be upon a scale of not less than a quarter of an inch to every one hundred feet an enlarged plan shall be added of any building, yard, courtyard or land within the curtilage of any building, or of any ground cultivated as a garden either in the line of the proposed work or included within the limits of the said deviation, upon a scale of not less than a quarter of an inch to every one hundred feet.

2. The plan shall exhibit thereon the distances in miles and furlongs from one of the termini; and a memorandum of the radius of every curve, not exceeding one mile in length, shall be noted on the plan in furlongs and chains; and where tunnelling, as a substitute for open cutting, is intended, such tunnelling shall be marked by a dotted line on the plan.

3. If it be intended to divert, widen or narrow any turnpike road, public carriage road, navigable river, canal, tramway or railway, the course of such diversion, and the extent of such widening or narrowing, shall be marked on the plan.

Book of Reference.

4. The book of reference to every such plan shall contain the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands in the line of the proposed work, or within the limits of deviation as defined upon the plan, and shall describe such lands.

Section.

5. The section shall be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to one hundred feet, and shall show the surface of the ground marked on the plan, the intended level of the proposed work, the height of every embankment and the depth of every cutting, and a datum horizontal line, which shall be the same throughout the whole length of the work or any branch thereof respectively, and shall be referred to some fixed point (stated in writing on the section) near either of the termini.

6. The line of the tramway marked on the section shall correspond with the upper surface of the trams.

7. Distances on the datum line shall be marked in miles and furlongs to correspond with those on the plan; a vertical measure from the datum line to the line of the tramway shall be marked in feet and inches, or decimal parts of a foot, at each change of the gradient or inclination; and the proportion or rate of inclination between each such change shall also be marked.

8. Wherever the line of the tramway is intended to cross any turnpike road, public carriage road, navigable river, canal, tramway or railway, the height of the tramway over or depth under the surface thereof, and the height and span of every arch of all bridges and viaducts by which the tramway will be carried over the same, shall be marked in figures at every crossing thereof; and where the tramway will be carried across any such turnpike road, public carriage road, tramway or railway on the level thereof, such crossing shall be so described on the section, and it shall also be stated if such level will be unaltered.

9. If any alteration be intended in the water level of any canal, or in the level or rate of inclination of any turnpike road, public carriage road, tramway or railway, which will be crossed by the line of tramway, then the same shall be stated on the section, and each alteration shall be numbered; and cross sections, in reference to the said numbers, on a horizontal scale of not less than one inch to every three hundred and thirty feet, and on a vertical scale of not less than one inch to every forty feet, shall be added, which shall show the present surface of such canal, road, tramway or railway, and the intended surface thereof when altered; and the greatest of the present and intended rates of in-

clination of such road, tramway or railway shall also be marked in figures thereon; and where any public carriage road is crossed on the level, a cross section of such road shall also be added, and all such cross sections shall extend for two hundred yards on each side of the centre line of the tramway.

10. Wherever the extreme height of any embankment or the extreme depth of any cutting shall exceed five feet, the extreme height over or depth under the surface of the ground shall be marked in figures upon the section; and if any bridge or viaduct of more than three arches shall intervene in any embankment, or if any tunnel shall intervene in any cutting, the extreme height or depth shall be marked in figures on each of the parts into which such embankment or cutting shall be divided by such bridge, viaduct or tunnel.

11. Where tunnelling, as a substitute for open cutting, or a viaduct as a substitute for solid embankment, is intended, the same shall be marked on the section.

12. Every plan and section shall be signed by the engineer of the promoters.

PART III.

Notice to Owners, Lessees and Occupiers of Lands.

1. The notice required to be given by sect. III. of this act shall be given in respect of all lands intended to be taken, or which may be taken as being within the limits of deviation defined upon the plan, and shall be as nearly as may be in the form set forth in the Appendix marked (A.)

2. Such notice shall be given by being delivered personally to every person to whom the same is to be given, or by being left at his usual or last known place of abode, or, in his absence from the United Kingdom, with his agent, on or before the first day of May, or by being forwarded by post in a registered letter, addressed with a sufficient direction to his usual place of abode, and posted on or before the twenty-eighth day of April at the chief post office in Dublin, Belfast, Cork or Athlone, at such hours and according to such regulations as her Majesty's postmaster-general shall from time to time appoint for the posting and registration of such letters.

3. In all cases the written acknowledgment of the person applied to shall, in the absence of other proof, be sufficient evidence of a notice having been given, and in case of a notice having been forwarded by post in a registered letter, the production of the post-office receipt for such letter, duly stamped, in such form as the postmaster-general shall appoint, shall be sufficient evidence of the due delivery of such letter; provided it appear that the same was properly and sufficiently directed, and was not returned by the post office as undelivered.

4. Except in the case of delivery of letters by post, a notice served on a Sunday shall be of no effect, and a notice served after eight o'clock in the evening of any week day but Saturday shall be deemed to be served on the following day, and if served after that hour on a Saturday, shall be deemed to be served on the following Monday.

APPENDIX (A.) to PART III.

[Form referred to in Regulation 1.]

No. —

Sir,—We beg to inform you, that application is intended to be made to the lord lieutenant in council, through the [grand jury of the county of _____, or as the case may be,] at the ensuing [summer assizes, or as the case may be,] for an order in council [here insert a short statement of the objects of the proposed order], and that the property mentioned in the annexed schedule, or some part thereof, in which we understand you are interested as therein stated, will be required for the purposes of the said undertaking, according to the line thereof as at present laid out, or may be required to be taken under the usual powers of deviation to the extent of _____ yards on either side of the said line which will be applied for, and will be passed through in the manner mentioned in such schedule.

We also beg to inform you, that a plan and section of the said undertaking, with a book of reference thereto, have been or will be deposited with the [secretary of the grand jury of the said county, or as the case may be], on or before the _____ of _____, on which plan your property is designated by the numbers set forth in the annexed schedule.

As we are required to report whether you assent to or dissent from the proposed undertaking, or whether you are neuter in respect thereto, you will oblige us by writing your answer of assent, dissent or neutrality in the form left herewith, and returning the same to us with your signature on or before the _____ day of _____ next; and if there should be any error or misdescription in the annexed schedule, we shall feel obliged by your informing us thereof, at your earliest convenience, that we may correct the same without delay.

We are, Sir, your most obedient servants,

To

Note.—If the application be forwarded by post, the words "Parliamentary Notice" are to be printed or written on the cover.

APPENDIX.

SCHEDULE referred to in the foregoing Notice, describing the Property therein alluded to, and the Manner in which the Line of the proposed Work, as delineated upon the Plan and Section, will affect the same.

	Parish, Township, Townland, or Extra-parochial Place.	Number on Plan.	Description.	Owner.	Lessee.	Occupier.	Description of the Section of the Line deposited, showing the greatest Height of Embankment and Depth of Cutting where the Property is intersected by the centre Line of the proposed Work.
—							
Property in the Line of the proposed Work, as at present laid out (including Property, any Part of which is within Eleven Yards, or thereabouts, of the centre Line of such proposed Work, as delineated upon the Plan).							
—							
Property within the Limits of the Deviation intended to be applied for.							

Note.—Where the Property is not intersected by the centre Line, the description of the Section is not given in the last Column.

PART IV.

APPENDIX.

List of Owners, &c. assenting, dissenting and neuter.

Separate lists shall be made of the names of the owners or reputed owners, lessees or reputed lessees and occupiers, to whom notice has been given, distinguishing those who have assented, dissented or are neuter in respect of such notice, or who have returned no answer thereto; and where no written acknowledgment has been returned to a notice sent by post, or where a notice by post has been returned as undelivered, the direction of the letter in which the notice was sent shall be inserted in the lists.

PART V.

Public Inquiry by Board of Works.

1. The Board of Works shall direct their attention especially to the following heads of inquiry, and shall require evidence from the promoters thereon; namely,—

- (1.) The financial arrangements made or proposed by the promoters:
- (2.) Where the promoters propose that a company should be incorporated by order in council for the execution of the undertaking, the number and amount of shares actually subscribed for or agreed to be taken, and the amount of share capital and of loans proposed to be authorized:
- (3.) The sufficiency of the estimate for the works:
- (4.) The merits, in an engineering point of view, of the proposed tramway; the character of the gradients and curves; the number and extent of the tunnels, if any; the crossings or other user of public roads on the level; and any peculiar engineering difficulties, with the modes proposed for overcoming them:
- (5.) The degree of favour or objection with which the project is regarded by the landowners and others in the neighbourhood of the proposed tramway.

2. The Board of Works shall hear in opposition to the undertaking any such owner, lessee, occupier, company, person or inhabitants as is or are entitled to be heard under the provisions of this act before a grand jury.

3. The Board of Works may call for the production of any documents in the possession or power of the promoters, or of any company or person admitted to be heard in opposition to the undertaking, which the Board of Works may think necessary, and may examine any such person and his witnesses, and the witnesses for any such company and for the promoters, on oath or otherwise, and administer any oath or declaration necessary for that purpose.

SCHEDULE (B.)

Maximum Tolls and Rates of Charge, with Regulations.

PASSENGERS.

1. The maximum rates of charge to be made by the owners of the tramway for the conveyance of passengers thereon, including the tolls for the use of the tramway and of carriages, and cost of moving power, and every other expense connected with such conveyance, shall be—

For every passenger conveyed in a first-class carriage, the sum of twopence per mile:

For every passenger conveyed in a carriage of inferior class, the sum of one penny halfpenny per mile.

2. The foregoing restrictions shall not extend to any special trains that may be required to run on the tramway, but shall apply only to the express and ordinary trains appointed from time to time by the owners for the conveyance of passengers and goods on the tramway.

3. Every passenger travelling on the tramway may take with him his ordinary luggage, not exceeding one hundred pounds in weight for first-class passengers and sixty pounds in weight for passengers of inferior class, without any charge being made for the carriage thereof.

GOODS.

4. Subject to the provisions hereinafter contained respecting small parcels and single articles of great weight, the tolls to be taken by the owners of the tramway in respect of the tonnage of all articles conveyed in carriages thereon, or on any part thereof, shall be—

(Class 1.)

For dung, and all sorts of manure, chalk and all undressed materials for the repair of roads or highways:

For all coals, coke, culm, ironstone and iron ore:

For all charcoal, limestone, stones for building, pitching and paving, bricks, tiles, slates, clay and sand:

For all iron, lead, tin and tin plates (except nails, utensils or other articles of merchandise):

Not exceeding for the use of the tramway one penny per ton per mile:

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APPENDIX.

If conveyed in carriages provided by the owners of the tramway, an additional sum per ton per mile not exceeding one-eighth of a penny:
 If drawn or propelled by power provided by the owners of the tramway, a further sum per ton per mile not exceeding three-eighths of a penny.

(Class 2.)

For all other goods, wares, merchandise, articles, matters or things (except carriages, hereinafter otherwise provided for), not exceeding for the use of the tramway twopence per ton per mile:

If conveyed in carriages provided by the owners of the tramway, a further sum per ton per mile not exceeding one halfpenny:

If drawn or propelled by power provided by the owners of the tramway, a further sum per ton per mile not exceeding one halfpenny.

(Class 3.)

For every carriage, of whatever description (not being a carriage adapted and used for travelling on a tramway, and not weighing more than one ton), not exceeding for the use of the tramway sixpence per ton per mile, and the sum of twopence per mile for every additional quarter of a ton or fractional part of a quarter of a ton above one ton which any such carriage may weigh:

If any such carriage be conveyed on a truck or platform provided by the owners of the tramway, an additional sum per mile not exceeding twopence:

If drawn or propelled by power provided by the owners of the tramway, a further sum per mile not exceeding twopence.

ANIMALS.

5. The tolls to be taken by the owners of the tramway in respect of animals conveyed in carriages on the tramway, shall be,—

(Class 4.)

For every horse, mule, ass or other beast of draught or burden, ox, cow, bull or head of neat cattle, conveyed in or upon any such carriage, not exceeding for the use of the tramway threepence per mile:

If conveyed in or upon any carriage provided by the owners of the tramway, an additional sum per mile not exceeding one penny:

If such carriage be drawn or propelled by power provided by the owners of the tramway, an additional sum per mile not exceeding twopence.

(Class 5.)

For every calf, pig, sheep, lamb or other small animal conveyed in or upon any such carriage, not exceeding for the use of the tramway one penny per mile:

If conveyed in any carriage provided by the owners of the tramway, an additional sum per mile not exceeding one farthing:

If such carriage be drawn or propelled by power provided by the owners of the tramway, an additional sum per mile not exceeding twopence.

6. The maximum rate of charge to be made by the owners of the tramway for the conveyance of animals, articles, matters or things respectively included in the classes before mentioned, including the tolls for the use of the tramway, and of carriages, and cost of moving power, and every other expense connected with such conveyance, shall not exceed the amounts following:

For the matters mentioned in Class 1, not exceeding one penny halfpenny per ton per mile:

For the matters mentioned in Class 2, not exceeding threepence per ton per mile:

For any carriage mentioned in Class 3, not weighing more than one ton, not exceeding tenpence per mile, and if weighing more than one ton, not exceeding twopence per mile for every quarter of a ton or fractional part of a quarter of a ton additional:

For everything mentioned in Class 4, not exceeding sixpence per mile:

For everything mentioned in Class 5, not exceeding threepence farthing per mile:

Provided always, that it shall be lawful for the owners of the tramway to demand and take, in addition to the tolls and rates of charge hereinbefore authorized, a reasonable sum for the delivery and collection of goods and other services incidental to the business of a carrier where such services respectively shall be performed by the owners of the tramway otherwise than on the premises of the tramway.

7. The following provisions and regulations shall be applicable to the calculation of the tolls:

For passengers, animals or things conveyed on the tramway for a less distance than four miles the company may demand tolls as for four miles:

For a fraction of a mile beyond four miles, or beyond any greater number of miles, the company may demand tolls on merchandise for such fraction in proportion to

the number of quarters of a mile contained therein, and if there be a fraction of a quarter of a mile, such fraction shall be deemed a quarter of a mile; and in respect of passengers every fraction of a mile beyond an integral number of miles shall be deemed a mile:

For a fraction of a ton the company may demand toll according to the number of quarters of a ton in the fraction, and if there be a fraction of a ton the fraction shall be deemed a quarter of a ton:

With respect to all things, except stone and timber, the weight shall be determined according to the usual avoirdupois weight:

With respect to stone and timber, fourteen cubic feet of stone, forty cubic feet of oak, mahogany, teak, beech or ash, and fifty cubic feet of any other timber, shall be deemed one ton weight, and so in proportion for any smaller quantity.

8. With respect to small parcels and single articles of great weight, the owners of the tramway may lawfully demand for the carriage thereof on the whole or any part of the line the tolls following:

SMALL PARCELS.

For any parcel not exceeding seven pounds in weight, sixpence:

For any parcel exceeding seven pounds in weight, but not exceeding fourteen pounds in weight, ninepence:

For any parcel exceeding fourteen pounds in weight, but not exceeding twenty-eight pounds in weight, one shilling:

For any parcel exceeding twenty-eight pounds in weight, but not exceeding fifty-six pounds in weight, one shilling and sixpence:

For parcels exceeding fifty-six pounds in weight, but not exceeding five hundred pounds in weight, such reasonable sum as the owners of the tramway may think fit:

Provided always, that articles sent in large aggregate quantities, although made up of separate parcels, such as bags of sugar, coffee, meal, and the like, shall not be deemed small parcels, but that term shall apply only to single parcels in separate packages.

SINGLE ARTICLES OF GREAT WEIGHT.

For the carriage of any one boiler or cylinder, or any one piece of machinery, or single piece of timber or stone, or other single article, the weight of which, including the carriage, shall exceed three tons, the owners of the tramway may demand such sum as they think fit.

9. Nothing herein contained shall be held to prevent the owners of the tramway from taking any increased charge, over and above the charges hereinbefore limited, for the conveyance of goods of any description, by agreement with the owners of and persons in charge of such goods, either in respect of the conveyance of such goods, except small parcels, by passenger or other trains, or by reason of any other special service performed by the owners of the tramway in relation to such goods.

SCHEDULE (C.)

General Acts relating to Railways by this Act made applicable to Tramways.

—	Session and Chapter.	Title.
1	1 & 2 Vict. c. 98 (g)	An Act to provide for the Conveyance of the Mails by Railways.
2	3 & 4 Vict. c. 97 (h)	An Act for regulating Railways.
3	5 & 6 Vict. c. 55 (i)	An Act for the better Regulation of Railways and for the Conveyance of Troops.
4	7 & 8 Vict. c. 85 (k)	An Act to attach certain Conditions to the Construction of future Railways authorized or to be authorized by any Act of the present or succeeding Sessions of Parliament, and for other Purposes in relation to Railways.
5	17 & 18 Vict. c. 31 (l)	The Railway and Canal Traffic Act, 1854.

(g) Ante, p. 2. As amended by 10 & 11 Vict. c. 85, s. 16, ante, p. 111.

(h) Ante, p. 7.

(i) Ante, p. 10.

(k) Ante, p. 18.

(l) Ante, p. 134.

APPENDIX.

24 & 25 VICT. CAP. 69.

An Act to provide for the Formation of Tramways on Turnpike and Statute Labour Roads in Scotland. [1st August, 1861.]

Whereas it would be of great public and local advantage if provision were made for the formation of tramways on turnpike and statute labour roads in Scotland: Be it enacted by (&c. &c.), as follows :

Short title.

Interpretation of terms.

1. This act may be cited for all purposes as "The Tramways (Scotland) Act, 1861."
2. The following words in this act shall have the several meanings hereby assigned to them :

The word "trustees" shall mean the trustees for the time being appointed and acting under any local turnpike or statute labour road act in Scotland :

The word "clerk" shall mean the clerk for the time being to such trustees :

The word "tramways" shall mean and include any tramroad or tramway, whether temporary or permanent, formed of iron, stone or other material, and laid down level with the surface on any turnpike or statute labour road under the provisions of this act.

With respect to the formation of tramways on turnpike roads :

Special meeting of trustees may be called to consider the expediency of laying down tramways.

3. Any two trustees may, by a requisition under their hands, require the clerk to call a special meeting of the trustees for any day and hour specified in such requisition, not being earlier than twenty-one days after the date thereof, for the purpose of considering the expediency of forming tramways on the roads under their management, or any part thereof; and within three days after the receipt of such requisition the clerk shall call such special meeting, to be held at the time specified therein, and at the place where the meetings of the trustees are usually held; and notice of such meeting, and of the special purpose thereof, shall be given by advertisement inserted once in each of two successive weeks in a newspaper published in the county in which such roads are situated, or if there be no newspaper published therein, in a newspaper published in an adjoining county.

Trustees may remit to their surveyor or to an engineer to prepare plans of tramways and estimate of expense.

4. If the trustees present at such special meeting shall resolve that it is expedient to form tramways on the roads under their management, or any part thereof, they may remit to their surveyor, or to any engineer to be named by them, to prepare plans of the proposed tramways, showing the extent thereof, and the mode in which the same are to be formed, and the portions of the roads to be occupied thereby, with an estimate of the expense of such tramways; and such plans and estimate of expense shall be lodged with the clerk, for the inspection of the trustees, at least one month previous to the general or special meeting before which the same are to be laid.

Plans and estimate to be laid before general or special meeting of trustees.

5. The plans and estimate of expense prepared by such surveyor or engineer shall be laid before any general meeting of the trustees convened under the provisions of the General Turnpike Road Act for Scotland, 1 & 2 Will. 4, c. 43, or of any local act under which the trustees are appointed and acting, or before a special meeting of the trustees to be called in the manner provided by the said General Turnpike Road Act; and the trustees present at such general or special meeting may approve or disapprove of such plans and estimate of expense, or may direct such alterations to be made thereon as they may deem necessary, and may resolve to proceed or not to proceed with the formation of the tramways as they may think fit.

Tramways may be laid down according to plans.

6. On such plans and estimate being finally approved by the trustees at any general or special meeting, as the case may be, it shall be lawful for the trustees to form and lay down the tramways in the manner described on such plans, and on the roads included therein, or on the sides of such roads.

Tramways to form part of roads.

7. The tramways shall be laid down on the surface of the roads or on the sides thereof, and shall form part of the roads, and, subject to the provisions of this act, all the enactments of the said General Turnpike Road Act, and of any local act relating to the road on which the tramways are laid down, shall be applicable to the tramways, in the same manner and to the same effect as such enactments are applicable to such roads.

Expense of forming and maintaining tramways, how to be defrayed.

8. The expense of forming and laying down the tramways, and incidental thereto, shall be defrayed out of the tolls and revenues of the roads under the management of the trustees, or out of money to be borrowed on the credit of such tolls and revenues; and it shall be lawful for the trustees to borrow money for the purpose of defraying such expense, and to grant assignments of such tolls and revenues in security of the payment of the money so to be borrowed, in the manner provided by the said General Turnpike Road Act, any provision or restriction with respect to the power of borrowing money contained in any local act relating to such roads to the contrary notwithstanding; and the expense of maintaining, managing, and repairing the tramways shall be defrayed by the trustees out of the tolls and revenues of such roads: provided that it shall not be lawful for the trustees to apply any part of such tolls and revenues in defraying the expense of forming the tramways, or to borrow money for that purpose on the security of such tolls and revenues,

without the consent in writing of the persons entitled to two-thirds of the money borrowed and remaining due on the credit of such tolls and revenues.

9. It shall be lawful for the trustees, with the powers and authorities and subject to the provisions and exemptions contained in the said General Turnpike Road Act, and in any local act relating to the roads on which the tramways are formed, to demand and take or cause to be demanded and taken, for and in respect of all carts, waggons and carriages using or passing over the tramways, the same tolls as are levied for the time being under the provisions of such acts for and in respect of carts, waggons and carriages using or passing over such roads; and the tolls levied and received on and in respect of the tramways shall be held and applied by the trustees for the same uses and purposes as the toll duties levied and received on and in respect of such roads: provided always, that any cart, waggon, or carriage using or passing over the tramways for any distance exceeding one hundred yards shall be liable to the same toll as if such cart, waggon, or carriage had passed through a toll gate on such roads; and the tolls payable for and in respect of carts, waggons, and carriages so using or passing over the tramways, and not passing through a toll gate, may be sued for and recovered in the same manner as toll duties may be sued for and recovered under the provisions of the said General Turnpike Road Act, which are hereby made applicable to the tolls payable for and in respect of the use of the tramways: provided also, that any cart, waggon, or carriage using or passing over the tramways or any part thereof, and thereafter passing through a toll gate on the road on which the tramways are formed, shall only be liable to pay a single toll, in the same manner as if such cart, waggon, or carriage had used or passed over such road.

10. It shall be lawful for the trustees to compound and agree, for any term not exceeding one year at any one time, with any person or company using the tramways or any part thereof exceeding one hundred yards in length, for the passing of his or their carts waggons, or carriages over the tramways: provided that such compositions and agreements shall be subject to all the provisions with respect to compositions for tolls contained in the fifty-third section of the said General Turnpike Road Act.

11. The trustees may make such regulations for and with respect to the use of the tramways as they think fit; and such regulations shall be published by printed copies thereof being affixed on boards to be set up at each end of the tramways or at the toll gates nearest thereto; and every person who commits any breach or contravention of such regulations shall be liable to a penalty not exceeding five pounds for each offence; and such penalties may be sued for, imposed, and recovered in the manner provided by the said General Turnpike Road Act.

With respect to the formation of tramways on statute labour roads:

12. In the event of any application being made to the trustees of any statute labour road by any person or company desiring to form tramways on such road, the trustees may, at any general or special meeting convened under the provisions of the General Statute Labour Road Act for Scotland, 8 & 9 Vict. c. 41, or of any local act under which the trustees are appointed and acting, authorize such person or company to form the tramways; and on such authority being granted it shall be lawful for such person or company, at his or their own expense, to form and lay down the tramways to such extent, in such manner and on such terms as shall be agreed upon and approved by the trustees or their surveyor.

13. The tramways shall be laid down on the surface of the roads or on the sides thereof, and shall form part of the roads, and may be used by all carts, waggons and carriages passing over the roads; and, subject to the provisions of this act, all the enactments of the said General Statute Labour Road Act and of any local act relating to the roads on which the tramways are laid down shall be applicable to the tramways, in the same manner and to the same effect as such enactments are applicable to such roads; and the expense of maintaining, managing and repairing the tramways shall be defrayed by the trustees out of the funds and revenues under their management, or by the person or company by whom the same were laid down, or jointly by the trustees and such person or company, as may be agreed upon.

14. The trustees may make such regulations for and with respect to the use of the tramways as they think fit; and before taking effect such regulations shall be published by printed copies thereof being affixed on boards to be set up at each end of the tramways; and every person who commits any breach or contravention of such regulations shall be liable to a penalty not exceeding five pounds for each offence; and such penalties may be sued for, imposed and recovered in the manner provided by the said General Statute Labour Road Act.

15. It shall be lawful for the person or company by whom the tramways on any statute labour road were laid down, or his or their heirs or successors, and they are hereby required, to take up and remove the same at such time as shall have been agreed on with the trustees: provided that on the tramways being so removed the road on which the same were laid down shall, to the satisfaction of the trustees or their surveyor, be restored by such person or company, or his or their heirs or successors, at his or their own expense, to the same state and condition, as nearly as may be, in which such road was at the time of laying down the tramways.

APPENDIX.

Tolls for use of tramways.

Trustees may compound for tolls on tramways.

Trustees may make regulations for use of tramways.

Tramways may be formed on statute labour roads.

Tramways to form part of roads.

Trustees may make regulations for use of tramways.

Tramways may be removed.

APPENDIX.

Tramways not to be laid down in burghs without consent of magistrates and council.

Tramways to be kept in constant good order, and trustees may acquire right to them when proposed to be removed.

16. Nothing in this act contained shall authorize the trustees to form or lay down tramways within the municipal or parliamentary boundaries of any royal or parliamentary burgh, without the consent in writing of the magistrates and council of such burgh first had and obtained.

17. The person or company by whom the tramways on any statute labour road shall have been laid down, and their heirs and successors, shall maintain such tramways, while unremoved, in constant good order for traffic at the sight and to the satisfaction of the surveyor; and when they shall propose to remove the same as aforesaid, the trustees shall be entitled to acquire all right therein belonging to such person or company, or their heirs and successors, on payment to them of such sum as the same may be valued at by valuers agreed on by the trustees and such person or company, or their heirs and successors, or, failing such agreement, by any valuator or valuers appointed by the sheriff of the county on the application of either party.

24 & 25 VICT. CAP. 102.

An Act to amend the Tramways (Ireland) Act, 1860. [6th August, 1861.]

23 & 24 Vict.
c. 152 (a).

Act recited and this act to be read together.

One approval by grand jury to be sufficient.

Applications at spring or summer assizes.

Notices to be given for spring assizes.

Approval of grand jury may be traversed.

Whereas an act was passed in the last session of Parliament, intituled "An Act to facilitate internal Communication (b) by means of Tramroads or Tramways:" And whereas some of the provisions of the said act have been found to cause unnecessary expense and delay, and it is expedient to amend the same: Be it therefore enacted by (&c. &c.), as follows; (that is to say,)

1. The said recited act shall be continued and be in full force except when the same shall be altered or amended by or be inconsistent with the provisions of this act, and the recited act and this act shall be read together as one act.

2. It shall not be necessary for the grand jury in future to pronounce a provisional approval of the undertaking, but the grand jury in proceeding under the fifth section of the said recited act shall definitively approve or disapprove of the said undertaking at the first assizes at which the same shall be brought before them, and it shall not be necessary to obtain any further or other approval from the grand jury at any subsequent assizes.

3. The application to the grand jury for their approval may be made either at the spring or summer assizes.

4. In case the application is made at the spring assizes, the advertisements required by the first section of the said act shall be published in the months of November or December or either of them immediately preceding, and the deposits required by the second and fourth sections of the said act shall be made on or before the first and twelfth day of December respectively, and the notices required by the third section shall be given on or before the second day of December.

5. Any person entitled to appear on the inquiry before the grand jury may, in the case of their approval of the undertaking, traverse such approval, subject to and under the following regulations:

Such traverse shall be entered with the clerk of the crown not later than twelve o'clock on the day following the approval of the grand jury;

It shall be on either of the following grounds:—

First. That the preliminaries required by law for the application to the grand jury have not been complied with;

Second. That the construction of the undertaking according to the plan approved of by the grand jury would not be beneficial to the public;

In case of a traverse on the first ground, same shall be disposed of by the judges of assize, or one of them, after hearing such evidence as may be adduced;

In case of a traverse on the second ground, same shall be tried in all respects as issues joined in the superior courts of common law are or may be triable by law at such assizes;

The judges of assize, or one of them, may, if it shall appear fit, direct such traverse to be tried by a special jury;

In case more persons than one shall enter a traverse on the second ground, there shall be one trial of all such traverses, and the judge shall make such order as may seem fit for the conducting of such trial, and the appearance and intervention of the several traversers thereat;

Every traverse under this act shall be determined or tried at the same assizes at which it is entered, and in case the judge shall rule or the jury find in favour of such traverse, as the case may be, the approval of the grand jury shall be void and of no effect;

(a) Ante, p. 149.

(b) Sic.

APPENDIX.

Every traverse on the first ground shall be confined to the specific points mentioned by the traverser in his memorial lodged with the secretary of the grand jury, and the particular points of non-compliance complained of shall be also stated in such traverse.

6. The inquiry by the Board of Works directed by the ninth section of the said act shall take place before any application is made to the grand jury, in order that their report shall be submitted to the grand jury at the first application, and the Board of Works shall institute such inquiry upon the request of the promoters, and upon having deposited with them a reasonable sum, not in any case exceeding one hundred pounds, to cover the expenses of such inquiry.

Inquiry by Board of Works in the first instance.

7. The inquiry to be made by the Board of Works, and the report to be made thereon, shall extend only to the merits of the undertaking in an engineering point of view, and to any modification of the same in that respect which may be advantageously made.

To be confined to engineering questions.

8. Instead of constituting a new company under the fifteenth section of the said act, the lord lieutenant in council may, if he shall so think fit, and if so desired by the promoters, empower any existing company incorporated by act of Parliament, or charter, or constituted by any statute regulating joint stock companies, to execute such undertaking, if it shall appear that such company have power to provide the necessary capital and to apply the same to the purposes of such undertaking; but no such order shall be deemed or taken to authorize or sanction the employment by the said company for the purposes of such undertaking or of the application for the same of any funds which independently of such order they would not have power so to apply.

Existing company may be empowered to execute work.

9. In any case in which the undertaking shall be approved of by the grand jury, and no petition of appeal shall be presented against such approval to the lord lieutenant in council by any of the parties entitled under such act to appeal, the order in council shall immediately take effect without any act of Parliament confirming the same; but in any case in which such petition of appeal is presented before the order in council is made, such order shall have no effect until confirmed by act of Parliament, even although no person shall appear to sustain such appeal; and when any order shall be made after the presentation of such appeal the fact of such appeal having been presented shall be stated in such order.

Orders in council valid without confirmation by Parliament.

10. In any case in which persons constructing any tramway shall only seek under the provisions of the said act power to cross a highway, it shall be lawful for the grand jury, with the previous approbation of the presentment sessions held for the barony in which such proposed crossing is situate, to give permission for such crossing to be made, and thereupon and immediately upon such permission being given, and without any other approval, it shall be lawful for the persons constructing such tramway to lay down the same across any public road or roads for which permission shall have been so given; and it shall be lawful for the grand jury to annex to such permission any conditions or stipulations which to them shall seem fit; and in case such permission shall be used by the promoters, they shall be bound by such conditions and stipulations as if the same had been inserted in a special act of Parliament authorizing such crossing, and all persons interested in same may have the same rights and remedies; and it shall be further lawful for the grand jury, if they shall so think fit, before such permission is acted on, to require persons of sufficient substance, to be approved of as they may direct, to enter into a bond to the secretary of the grand jury, county treasurer or such other person as they may appoint, in such sum as they may name, conditioned for the observance of all such conditions and stipulations.

Grand jury may give permission for tramway to cross a highway.

11. This act may be cited as "The Tramways (Ireland) Amendment Act, 1861."

Short title.

25 & 26 VICT. CAP. 89.

An Act for the Incorporation, Regulation and Winding-up of Trading Companies and other Associations. [7th August, 1862.]

Whereas it is expedient that the laws relating to the incorporation, regulation and winding-up of trading companies and other associations should be consolidated and amended: Be it therefore enacted by (&c. &c.), as follows:

Preliminary.

1. This act may be cited for all purposes as "The Companies Act, 1862."

Short title.

2. This act, with the exception of such temporary enactment as is hereinafter declared to come into operation immediately, shall not come into operation until the 2nd day of November, 1862, and the time at which it so comes into operation is hereinafter referred to as the commencement of this act.

Commencement of act.

3. For the purposes of this act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

Definition of insurance company.

APPENDIX.

Prohibition of partnerships exceeding certain number.

4. No company, association or partnership consisting of more than ten persons shall be formed, after the commencement of this act, for the purpose of carrying on the business of banking, unless it is registered as a company under this act, or is formed in pursuance of some other act of Parliament, or of letters patent; and no company, association or partnership consisting of more than twenty persons shall be formed, after the commencement of this act, for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this act, or is formed in pursuance of some other act of Parliament, or of letters patent, or is a company engaged in working mines within and subject to the jurisdiction of the stannaries.

Division of act.

5. This act is divided into Nine Parts, relating to the following subject matters:

The First Part,—to the constitution and incorporation of companies and associations under this act:

The Second Part,—to the distribution of the capital and liability of members of companies and associations under this act:

The Third Part,—to the management and administration of companies and associations under this act:

The Fourth Part,—to the winding-up of companies and associations under this act:

The Fifth Part,—to the registration office:

The Sixth Part,—to application of this act to companies registered under the Joint Stock Companies Acts:

The Seventh Part,—to companies authorized to register under this act:

The Eighth Part,—to application of this act to unregistered companies:

The Ninth Part,—to repeal of acts, and temporary provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

Mode of forming company.

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this act in respect of registration, form an incorporated company, with or without limited liability.

Mode of limiting liability of members.

7. The liability of the members of a company formed under this act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Memorandum of association of a company limited by shares.

8. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things; (that is to say,)

- (1.) The name of the proposed company, with the addition of the word "limited" as the last word in such name:
- (2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:
- (3.) The objects for which the proposed company is to be established:
- (4.) A declaration that the liability of the members is limited:
- (5.) The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations:

- (1.) That no subscriber shall take less than one share:
- (2.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Memorandum of association of a company limited by guarantee.

9. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things; (that is to say,)

- (1.) The name of the proposed company, with the addition of the word "limited" as the last word in such name:
- (2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:
- (3.) The objects for which the proposed company is to be established:
- (4.) A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member,

and of the costs, charges and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

10. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things; (that is to say,)

APPENDIX.
Part I.

Memorandum of association of an unlimited company.

(1.) The name of the proposed company:

(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:

(3.) The objects for which the proposed company is to be established.

11. The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: it shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this act.

Stamp, signature, and effect of memorandum of association.

12. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but save as aforesaid, and save as is hereinafter provided in the case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association.

Power of certain companies to alter memorandum of association.

13. Any company under this act, with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the Board of Trade testified in writing under the hand of one of its secretaries or assistant secretaries, may change its name, and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Power of companies to change name (a).

Articles of Association.

14. The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient: the articles shall be expressed in separate paragraphs, numbered arithmetically: they may adopt all or any of the provisions contained in the table marked A. in the first schedule hereto: they shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration: in a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Regulations to be prescribed by articles of association.

15. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the table marked A. in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Application of Table A.

16. The articles of association shall be printed, they shall bear the same stamp as if they were contained in a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and such attestation shall be a sufficient attestation in Scotland as well as in England and Ireland; when registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors and administrators, to conform to

Stamp, signature, and effect of articles of association.

(a) See also 26 & 27 Vict. c. 118, s. 36, et seq., post.

APPENDIX.

Part I.

Registration of memorandum of association and articles of association with fees as in Table B.

Effect of registration.

Copies of memorandum and articles to be given to members.

Prohibition against identity of names in companies.

Prohibition against certain companies holding land.

all the regulations contained in such articles, subject to the provisions of this act; and all monies payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt.

General Provisions.

17. The memorandum of association and the articles of association, if any, shall be delivered to the registrar of joint stock companies hereinafter mentioned, who shall retain and register the same: there shall be paid to the registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the table marked B. in the first schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C. in the first schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct: all fees paid to the said registrar in pursuance of this act shall be paid into the receipt of her Majesty's exchequer, and be carried to the account of the consolidated fund of the United Kingdom of Great Britain and Ireland.

18. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this act or by the desire of the parties to be registered, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned: a certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this act in respect of registration have been complied with.

19. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member, in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding one pound.

20. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved, and testifies its consent in such manner as the registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the registrar, change its name, and upon such change being made, the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

21. No company formed for the purpose of promoting art, science, religion, charity or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than two acres of land; but the Board of Trade may, by licence under the hand of one of their principal secretaries or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit.

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

Nature of interest in company.

22. The shares or other interest of any member in a company under this act shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate, and each share shall, in the case

APPENDIX.

Part II.

Definition of
"member."

of a company having a capital divided into shares, be distinguished by its appropriate number.

23. The subscribers of the memorandum of association of any company under this act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company under this act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

24. Any transfer of the share or other interest of a deceased member of a company under this act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Transfer by personal representative.

25. Every company under this act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:

Register of members.

(1.) The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number: and of the amount paid or agreed to be considered as paid on the shares of each member:

(2.) The date at which the name of any person was entered in the register as a member:

(3.) The date at which any person ceased to be a member:

And any company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company who shall knowingly and wilfully authorize or permit such contravention shall incur the like penalty.

26. Every company under this act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company; and such list shall state the names, addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:

Annual list of members.

(1.) The amount of the capital of the company, and the number of shares into which it is divided:

(2.) The number of shares taken from the commencement of the company up to the date of the summary:

(3.) The amount of calls made on each share:

(4.) The total amount of calls received:

(5.) The total amount of calls unpaid:

(6.) The total amount of shares forfeited:

(7.) The names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the registrar of joint stock companies.

27. If any company under this act, and having a capital divided into shares, makes default in complying with the provisions of this act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the registrar, such company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on company, &c., not keeping a proper register.

28. Every company under this act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the registrar of joint stock companies of such consolidation, division or conversion, specifying the shares so consolidated, divided or converted.

Company to give notice of consolidation or of conversion of capital into stock.

29. Where any company under this act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the registrar, all the provisions of this act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

Effect of conversion of shares into stock.

30. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies under this act and registered in England or Ireland.

Entry of trusts on register.

31. A certificate, under the common seal of the company, specifying any share or

Certificate of shares or stock.

APPENDIX.

Part II.

Inspection of register.

shares or stock held by any member of a company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

32. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned: except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied: if such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty; and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the vice-warden of the stannaries, in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

Power to close register.

33. Any company under this act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Notice of increase of capital and of members to be given to registrar.

34. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the registrar in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the registrar shall forthwith record the amount of such increase of capital or members: if such notice is not given within the period aforesaid the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Remedy for improper entry or omission of entry in register.

35. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, as respects companies registered in England or Ireland, by motion in any of her Majesty's superior courts of law or equity, or by application to a judge sitting in chambers, or to the vice-warden of the stannaries in the case of companies subject to his jurisdiction, and as respects companies registered in Scotland by summary petition to the court of session, or in such other manner as the said courts may direct, apply for an order of the court that the register may be rectified; and the court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application or petition, and any damages the party aggrieved may have sustained; the court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding, to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register: provided that the court, if a court of common law, may direct an issue to be tried, in which any question of law may be raised, and a writ of error or appeal, in the manner directed by "The Common Law Procedure Act, 1854," shall lie.

Notice to registrar of rectification of register.

36. Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the registrar, the court shall, by its order, direct that due notice of such rectification be given to the registrar.

Register to be evidence.

37. The register of members shall be *prima facie* evidence of any matters by this act directed or authorized to be inserted therein.

Liability of Members.

Liability of present and past members of company.

38. In the event of a company formed under this act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges and expenses of the winding up, and for the payment of such sums as

may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following; (that is to say,)

- (1.) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up:
- (2.) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member:
- (3.) No past member shall be liable to contribute to the assets of the company unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this act:
- (4.) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:
- (5.) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association:
- (6.) Nothing in this act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract:
- (7.) No sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

39. Every company under this Act shall have a registered office to which all communications and notices may be addressed; if any company under this act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on. Registered office of company.

40. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him; until such notice is given, the company shall not be deemed to have complied with the provisions of this act with respect to having a registered office. Notice of situation of registered office.

41. Every limited company under this act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company. Publication of name by a limited company.

42. If any limited company under this act does not paint or affix, and keep painted or affixed, its name in manner directed by this act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalty; and if any director, manager, or officer of such company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such company, or signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company. Penalties on non-publication of name.

43. Every limited company under this act shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or Register of mortgages.

APPENDIX.

Part III.

Certain companies to publish statement entered in schedule.

List of directors to be sent to registrar.

Penalty on company not keeping register of directors.

Promissory notes and bills of exchange.

Prohibition against carrying on business with less than seven members.

General meeting of company.

Power to alter regulations by special resolution.

Definition of special resolution.

charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: if any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding fifty pounds: the register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times, and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the vice-warden of the stannaries in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

44. Every limited banking company and every insurance company, and deposit, provident, or benefit society under this act shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D. in the first schedule hereto, or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on, and if default is made in compliance with the provisions of this section the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence.

45. Every company under this act, and not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the registrar of joint stock companies a copy of such register, and shall from time to time notify to the registrar any change that takes place in such directors or managers.

46. If any company under this act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the registrar in compliance with the foregoing rules, or in notifying to the registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

47. A promissory note or bill of exchange shall be deemed to have been made, accepted or indorsed on behalf of any company under this act, if made, accepted or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted or indorsed by or on behalf or on account of the company, by any person acting under the authority of the company.

48. If any company under this act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

Provisions for Protection of Members.

49. A general meeting of every company under this act shall be held once at the least in every year.

50. Subject to the provisions of this act, and to the conditions contained in the memorandum of association, any company formed under this act may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the table marked A. in the first schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

51. A resolution passed by a company under this act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy (in cases where by the regu-

lations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed: at any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same: notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company: in computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

52. In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A. in the first schedule hereto, and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Provision where no regulations as to meetings.

53. A copy of any special resolution that is passed by any company under this act shall be printed and forwarded to the registrar of joint stock companies, and be recorded by him: if such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Registry of special resolutions.

54. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution: where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct: and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Copies of special resolutions.

55. Any company under this act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company.

Execution of deeds abroad (a).

56. The Board of Trade may appoint one or more competent inspectors to examine into the affairs of any company under this act, and to report thereon, in such manner as the board may direct, upon the applications following: (that is to say,)

Examination of affairs of company by inspectors.

- (1.) In the case of a banking company that has a capital divided into shares, upon the application of members holding not less than one third part of the whole shares of the company for the time being issued:
- (2.) In the case of any other company that has a capital divided into shares, upon the application of members holding not less than one fifth part of the whole shares of the company for the time being issued:
- (3.) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one fifth of the whole number of persons for the time being entered on the register of the company as members.

57. The application shall be supported by such evidence as the Board of Trade may require, for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; the Board of Trade may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Application for inspection to be supported by evidence.

58. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power: any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly: if any officer or agent refuses to

Inspection of books.

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Part III.

Result of examination how dealt with.

produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence.

59. Upon the conclusion of the examination the inspectors shall report their opinion to the Board of Trade: such report shall be written or printed, as the Board of Trade directs: a copy shall be forwarded by the Board of Trade to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them: all expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Board of Trade shall direct the same to be paid out of the assets of the company, which it is hereby authorized to do.

Power of company to appoint inspectors.

60. Any company under this act may by special resolution appoint inspectors for the purpose of examining into the affairs of the company: the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Board of Trade, with this exception, that instead of making their report to the Board of Trade, they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspector had been appointed by the Board of Trade.

Report of inspectors to be evidence.

61. A copy of the report of any inspectors appointed under this act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding, as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Notices.

Service of notices on company.

62. Any summons, notice, order or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at their registered office.

Rules as to notices by letter.

63. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office.

Authentication of notices of company.

64. Any summons, notice, order or proceeding requiring authentication by the company, may be signed by any director, secretary or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Legal Proceedings.

Recovery of penalties.

65. All offences under this act made punishable by any penalty may be prosecuted summarily before two or more justices, as to England, in manner directed by an act passed in the session holden in the 11th & 12th Vict. c. 43, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," or any act amending the same; and as to Scotland, before two or more justices or the sheriff of the county, in manner directed by the act passed in the session of Parliament holden in the 17th & 18th Vict. c. 104, intituled "An Act to amend and consolidate the Acts relating to Merchant Shipping," or any act amending the same, as regards offences in Scotland against that act, not being offences by that act described as felonies or misdemeanors; and as to Ireland, in manner directed by the act passed in the session holden in the 14th & 15th Vict. c. 93, intituled "An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions and the Duties of Justices of the Peace out of Quarter Sessions in Ireland," or any act amending the same.

Application of penalties.

66. The justices or sheriff imposing any penalty under this act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered; and, subject to such direction, all penalties shall be paid into the receipt of her Majesty's exchequer, in such manner as the treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom.

Evidence of proceedings at meetings.

67. Every company under this act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every

general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

68. In the case of companies under this act, and engaged in working mines within and subject to the jurisdiction of the stannaries, the court of the vice-warden of the stannaries shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, which it now possesses by custom, usage or statute in the case of unincorporated companies, but only so far as such jurisdiction or powers are consistent with the provisions of this act and with the constitution of companies as prescribed or required by this act; and for the purpose of giving fuller effect to such jurisdiction in all actions, suits or legal proceedings instituted in the said court, in causes or matters whereof the court has cognizance, all process issuing out of the same, and all orders, rules, demands, notices, warrants and summonses required or authorized by the practice of the court to be served on any company, whether registered or not registered, or any member or contributory thereof, or any officer, agent, director, manager or servant thereof, may be served in any part of England without any special order of the vice-warden for that purpose, or by such special order may be served in any part of the United Kingdom of Great Britain and Ireland, or in the adjacent islands, parcel of the dominions of the crown, on such terms and conditions as the court shall think fit; and all decrees, orders and judgments of the said court made or pronounced in such causes or matters may be enforced in the same manner in which decrees, orders and judgments of the court may now by law be enforced, whether within or beyond the local limits of the stannaries; and the seal of the said court, and the signature of the registrar thereof, shall be judicially noticed by all other courts and judges in England, and shall require no other proof than the production thereof; the registrar of the said court, or the assistant registrar, in making sales under any decree or order of the court shall be entitled to the same privilege of selling by auction or competition without a licence, and without being liable to duty, as a judge of the Court of Chancery is entitled to in pursuance of the acts in that behalf.

69. Where a limited company is plaintiff or pursuer in any action, suit, or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence, the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

70. In any action or suit brought by the company against any member to recover any call or other monies due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other monies due whereby an action or suit hath accrued to the company.

Alteration of Forms.

71. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer; the Board of Trade may from time to time make such alterations in the tables and forms contained in the first schedule hereto, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as it deems requisite; any such table or form, when altered, shall be published in the London Gazette, and upon such publication being made, such table or form shall have the same force as if it were included in the schedule to this act, but no alteration made by the Board of Trade in the table marked A. contained in the first schedule shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such table.

Arbitrations.

72. Any company under this act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with "The Railway Companies Arbitration Act, 1859" (*m*), any existing or future difference, question or other matter whatsoever in dispute between itself and any other company or person, and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

73. All the provisions of "The Railway Companies Arbitration Act, 1859," shall be deemed to apply to arbitrations between companies and persons in pursuance of this act; and in the construction of such provisions "the companies" shall be deemed to include companies authorized by this act to refer disputes to arbitration.

APPENDIX.

Part III.

Jurisdiction of
Vice-Warden
of Stannaries.

Provision as to
costs in actions
brought by
certain limited
companies.

Declaration in
action against
members.

Board of Trade
may alter forms
in schedule.

Power for com-
panies to refer
matters to
arbitration.

Provisions of
22 & 23 Vict.
c. 59, to apply.

(*m*) 22 & 23 Vict. c. 59, ante, p. 139.

APPENDIX.

Part IV.

PART IV.

WINDING UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

Meaning of contributory.

74. The term "contributory" shall mean every person liable to contribute to the assets of a company under this act, in the event of the same being wound up: it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Nature of liability of contributory.

75. The liability of any person to contribute to the assets of a company under this act in the event of the same being wound up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty) accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

Contributories in case of death.

76. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly.

Contributories in case of bankruptcy.

77. If any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such bankrupt for all the purposes of the winding up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up; and for the purposes of this section any person who may have taken the benefit of any act for the relief of insolvent debtors before the eleventh day of October, one thousand eight hundred and sixty-one, shall be deemed to have become bankrupt.

Contributories in case of marriage.

78. If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall, during the continuance of the marriage, be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.

Winding up by Court.

Circumstances under which company may be wound up by court.

79. A company under this act may be wound up by the court as hereinafter defined, under the following circumstances, (that is to say,)

- (1.) Whenever the company has passed a special resolution requiring the company to be wound up by the court:
- (2.) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year:
- (3.) Whenever the members are reduced in number to less than seven:
- (4.) Whenever the company is unable to pay its debts:
- (5.) Whenever the court is of opinion that it is just and equitable that the company should be wound up.

Company when deemed unable to pay its debts.

80. A company under this act shall be deemed to be unable to pay its debts,

- (1.) Whenever a creditor, by assignment or otherwise, to whom the company is indebted, at law or in equity, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks (n) succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor:
- (2.) Whenever, in England and Ireland, execution or other process issued on a judgment, decree or order obtained in any court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part:
- (3.) Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made:
- (4.) Whenever it is proved to the satisfaction of the court that the company is unable to pay its debts.

Definition of "the court."

81. The expression "the court," as used in this part of this act, shall mean the following authorities, (that is to say,)

In the case of a company engaged in working any mine, within and subject to the juris-

(n) See *Re Catholic Publishing Co.*, 33 L. J. (Ch.) 325.

diction of the stannaries, the court of the vice-warden of the stannaries, unless the vice-warden certifies that in his opinion the company would be more advantageously wound up in the High Court of Chancery, in which case "the court" shall mean the High Court of Chancery :

In the case of a company registered in England that is not engaged in working any such mine as aforesaid, the High Court of Chancery :

In the case of a company registered in Ireland, the Court of Chancery in Ireland :

In all cases of companies registered in Scotland, the Court of Session in either division thereof :

Provided, that where the Court of Chancery in England or Ireland makes an order for winding up a company under this act, it may, if it thinks fit, direct all subsequent proceedings for winding up the same to be had in the Court of Bankruptcy having jurisdiction in the place in which the registered office of the company is situate ; and thereupon such last-mentioned Court of Bankruptcy shall, for the purposes of winding up the company, be deemed to be "the court" within the meaning of the act, and shall have for the purposes of such winding up all the powers of the High Court of Chancery or of the Court of Chancery in Ireland, as the case may require.

82. Any application to the court for the winding up of a company under this act shall be by petition ; it may be presented by the company, or by any one or more creditor or creditors, contributory or contributories of the company, or by all or any of the above parties, together or separately ; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Application for winding up to be made by petition.

83. Any judge of the High Court of Chancery may do in chambers any act which the court is hereby authorized to do ; and the vice-warden of the stannaries may direct that a petition for winding up a company be heard by him at such time and at such place within the jurisdiction of the stannaries, or within or near to the place where the registered office of the company is situated, as he may deem to be convenient to the parties concerned, or (with the consent of the parties concerned) at any place in England ; and all orders made thereupon shall have the same force and effect as if they had been made by the vice-warden sitting at Truro or elsewhere within the jurisdiction of the court, and all parties and persons summoned to attend at the hearing of any such petition shall be compellable to give their attendance before the vice-warden by like process and in like manner as at the hearing of any cause or matter at the usual sitting of the said court ; and the registrar of the court may, subject to exception or appeal to the vice-warden as heretofore used, do and exercise such and the like acts and powers in the matter of winding up as he is now used to do and exercise in a suit on the equity side of the said court.

Power of court.

84. A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Commencement of winding up by court.

85. The court may, at any time after the presentation of a petition for winding up a company under this act, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit or proceeding against the company, upon such terms as the court thinks fit ; the court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

Court may grant injunction.

86. Upon hearing the petition the court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just.

Course to be pursued by court on hearing petition.

87. When an order has been made for winding up a company under this act, no suit, action or other proceeding shall be proceeded with or commenced against the company except with the leave of the court, and subject to such terms as the court may impose.

Actions and suits to be stayed after order for winding up.

88. When an order has been made for winding up a company under this act, a copy of such order shall forthwith be forwarded by the company to the registrar of joint-stock companies, who shall make a minute thereof in his books relating to the company.

Copy of order to be forwarded to registrar.

89. The court may at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Power of court to stay proceedings.

90. When an order has been made for winding up a company limited by guarantee and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt (in England and Ireland of the nature of a specialty) due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the court.

Effect of order on share capital of company limited by guarantee.

91. The court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be sum-

Court may have regard to wishes of creditors or contributories.

APPENDIX.
Part IV.

moned, held and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court: in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Official Liquidators.

Appointment of
official liquidator.

92. For the purpose of conducting the proceedings in winding up a company, and assisting the court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators; and the court having jurisdiction may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators; in all cases if more persons than one are appointed to the office of official liquidator, the court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons. The court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the court.

Resignations,
removals, filling
up vacancies, and
compensation.

93. Any official liquidator may resign or be removed by the court on due cause shown: and any vacancy in the office of an official liquidator appointed by the court shall be filled by the court: there shall be paid to the official liquidator such salary or remuneration, by way of per-centage or otherwise, as the court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the court directs.

Style and duties
of official liqui-
dator.

94. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding up of the company as may be imposed by the court.

Powers of official
liquidator.

95. The official liquidator shall have power, with the sanction of the court, to do the following things:

To bring or defend any action, suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company:

To carry on the business of the company, so far as may be necessary for the beneficial winding up of the same:

To sell the real and personal and heritable and moveable property, effects and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:

To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal:

To prove, rank, claim and draw a dividend in the matter of the bankruptcy or insolvency or sequestration of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency or sequestration, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors:

To draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such company in the course of carrying on the business thereof:

To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any monies due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any monies due from a contributory, such money shall, for the purpose of enabling him to take out such letters or recover such monies, be deemed to be due to the official liquidator himself:

To do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Discretion of
official liqui-
dator.

96. The court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

97. The official liquidator may, with the sanction of the court, appoint a solicitor or law agent to assist him in the performance of his duties.

Ordinary Powers of Court.

98. As soon as may be after making an order for winding up the company, the court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

99. In settling the list of contributories the court shall distinguish between persons who are contributories in their own right, and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the court thinks fit.

100. The court may, at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

101. The court may, at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any monies due from him or from the estate of the person whom he represents to the company, exclusive of any monies which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the court in pursuance of this part of this act; and it may, in making such order, when the company is not limited, allow to such contributory by way of set-off any monies due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any monies due to him as a member of the company in respect of any dividend or profit:

Provided that when all the creditors of any company whether limited or unlimited are paid in full, any monies due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

102. The court may, at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

103. The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

104. All monies, bills, notes and other securities paid and delivered into the Bank of England or any branch thereof, in the event of a company being wound up by the court, shall be subject to such order and regulation for the keeping of the account of such monies and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the court may direct.

105. If any person made a contributory as personal representative of a deceased contributory makes a default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment thereof of the monies due.

106. Any order made by the court in pursuance of this act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

107. The court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

APPENDIX.

Part IV.

Appointment of solicitor to official liquidator.

Collection and application of assets.

Provision as to representative contributories.

Power of court to require delivery of property.

Power of court to order payment of debts by contributory.

Power of courts to make calls.

Power of court to order payment into bank.

Regulation of account with court.

Provision in case of representative contributory not paying monies ordered.

Order conclusive evidence.

Court may exclude creditors not proving within certain time.

APPENDIX.

Part IV.

Proceedings in the court of the Vice-Warden of the Stannaries on proof of debts.

Court to adjust rights of contributories.

Court to order costs.

Dissolution of company.

Registrar to make minute of dissolution of company.

Penalty on not reporting dissolution of company.

Petition to be *lis pendens*.

Power of court to summon persons before it suspected of having property of company.

Special provisions as to court of Vice-Warden of the Stannaries.

108. If in the course of proving the debts and claims of creditors in the court of the vice-warden of the stannaries any debt or claim is disputed by the official liquidator or by any creditor or contributory, or appears to the court to be open to question, the court shall have power, subject to appeal as hereinafter provided, to adjudicate upon it, and for that purpose the said court shall have and exercise all needful powers of inquiry touching the same by affidavit or by oral examination of witnesses or of parties, whether voluntarily offering themselves for examination or summoned to attend by compulsory process of the court, or to produce documents before the court; and the court shall also have power, incidentally, to decide on the validity and extent of any lien or charge claimed by any creditor on any property of the company in respect of such debt, and to make declarations of right, binding on all persons interested; and for the more satisfactory determination of any question of fact, or mixed question of law and fact, arising on such inquiry, the vice-warden shall have power, if he thinks fit, to direct and settle any action or issue to be tried either on the common law side of his court, or by a common or special jury, before the justices of assize in and for the counties of Cornwall or Devon, or at any sitting of one of the superior courts in London or Middlesex, which action or issue shall accordingly be tried in due course of law, and without other or further consent of parties; and the finding of the jury in such action or issue shall be conclusive of the facts found, unless the judge who tried it makes known to the vice-warden that he was not satisfied with the finding, or unless it appears to the vice-warden that, in consequence of miscarriage, accident, or the subsequent discovery of fresh material evidence, such finding ought not to be conclusive.

109. The court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

110. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges and expenses incurred in winding up any company in such order of priority as the court thinks just.

111. When the affairs of the company have been completely wound up, the court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

112. Any order so made shall be reported by the official liquidator to the registrar, who shall make a minute accordingly in his books of the dissolution of such company.

113. If the official liquidator makes default in reporting to the registrar, in the case of a company being wound up by the court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

114. Any petition for winding up a company by the court under this act, shall constitute a *lis pendens* within the terms of the act passed in the session holden in the second and third years of the reign of her present Majesty, chapter eleven, and intituled "An Act for the better Protection of Purchasers against Judgments, Crown Debts, *Lis pendens*, and *Fiats* in Bankruptcy," provided the same is duly registered in manner required by such act concerning suits in equity.

Extraordinary Powers of Court.

115. The court may, after it has made an order for winding up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the court may deem capable of giving information concerning the trade, dealings, estate or effects of the company; and the court may require any such officer or person to produce any books, papers, deeds, writings or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause such person to be apprehended and brought before the court for examination; nevertheless, in cases where any person claims any lien on papers, deeds or writings or documents produced by him, such production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding up to determine all questions relating to such lien.

116. If, after an order for winding up in the court of the vice-warden of the stannaries, it appears that any person claims property in, or any lien, legal or equitable, upon any of the machinery, materials, ores or effects on the mine or on premises occupied by the company in connexion with the mine, or to which the company was, at the time of the order, *prima facie* entitled, it shall be lawful for the vice-warden or the registrar to adjudicate upon such claim on interpleader in the manner provided by section eleven of the act passed in the eighteenth year of the reign of her present Majesty, chapter thirty-two; and any action or issue directed upon such interpleader may, if the vice-warden think fit, be tried in his court or at the assizes or the sittings in London or Middlesex, before a judge of one of the superior courts, in the manner and on the terms and conditions hereinbefore provided in the case of disputed debts and claims of creditors.

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Part IV.

117. The court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

118. The court may, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the United Kingdom, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, monies, securities for monies, goods and chattels to be seized, and him and them to be safely kept until such time as the court may order.

119. Any powers by this act conferred on the court shall be deemed to be in addition to and not in restriction of any other powers subsisting, either at law or in equity, of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

Examination of parties by court.

Power to arrest contributory about to abscond, or to remove or conceal any of his property.

Powers of court cumulative.

Enforcement of and Appeal from Orders.

120. All orders made by the Court of Chancery in England or Ireland, under this act may be enforced in the same manner in which orders of such Court of Chancery made in any suit pending therein may be enforced, and for the purposes of this part of this act the court of the vice-warden of the stannaries shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the Court of Chancery in England has in relation to matters within the jurisdiction of such court, and for the last-mentioned purposes the jurisdiction of the vice-warden of the stannaries shall be deemed to be co-extensive in local limits with the jurisdiction of the Court of Chancery in England.

Power to enforce orders.

121. Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court in Scotland during session, and to the lord ordinary on the bills during vacation, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls which they may wish to enforce, and of the amount due by each contributory respectively, and of the date when the same became due, to pronounce forthwith a decree against such contributories for payment of the sums so certified to be due by each of them respectively, with interest from the said date till payment, at the rate of five pounds per centum per annum, in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay such calls and interest; and such decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignment, unless with special leave of the court or lord ordinary.

Power to order contributories in Scotland to pay calls.

122. Any order made by the court in England for or in the course of the winding up of a company under this act shall be enforced in Scotland and Ireland in the courts that would respectively have had jurisdiction in respect of such company if the registered office of the company had been situate in Scotland or Ireland, and in the same manner in all respects as if such order had been made by the courts that are hereby required to enforce the same; and in like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of the winding up of a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland by the courts which would respectively have had jurisdiction in the matter of such company if the registered office of the company were situate in the division of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if such order had been made by the court required to enforce the same in the case of a company within its own jurisdiction.

Order made in England to be enforced in Ireland and Scotland.

123. Where any order, interlocutor, or decree made by one court is required to be enforced by another court, as hereinbefore provided, an office copy of the order, interlocutor, or decree so made shall be produced to the proper officer of the court required to enforce the same, and the production of such office copy shall be sufficient evidence of such order, interlocutor, or decree having been made, and thereupon such last-mentioned court shall take such steps in the matter as may be requisite for enforcing such order, interlocutor, or decree, in the same manner as if it were the order, interlocutor, or decree of the court enforcing the same.

Mode of dealing with orders to be enforced by other courts.

124. Rehearings of and appeals from any order or decision made or given in the matter of the winding up of a company by any court having jurisdiction under this act, may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same court in cases within its ordinary jurisdiction; subject to this restriction, that no such rehearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given, according to the

Appeals from orders.

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Part IV.

Judicial notice to be taken of signature of officers.

Special commissioners for receiving evidence.

Court may order the examination of persons in Scotland.

Affidavits, &c. may be sworn in Ireland, Scotland, or the colonies before any competent court or person.

practice of the court appealed from, unless such time is extended by the court of appeal: provided that it shall be lawful for the lord warden of the stannaries, by a special or general order, to remit at once any appeal allowed and regularly lodged with him against any order or decision of the vice-warden made in the matter of a winding up to the court of appeal in Chancery, which court shall thereupon hear and determine such appeal, and have power to require all such certificates of the vice-warden, records of proceedings below, documents, and papers, as the lord warden would or might have required upon the hearing of such appeal, and to exercise all other the jurisdiction and powers of the lord warden specified in the act of Parliament passed in the eighteenth year of the reign of her present Majesty, chapter thirty-two, and any order so made by the court of appeal in Chancery shall be final, without any further appeal.

125. In all proceedings under this part of this act, all courts, judges, and persons judicially acting, and all other officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the Courts of Chancery or Bankruptcy in England or in Ireland, or of the Court of Session in Scotland, or of the registrar of the court of the vice-warden of the stannaries, and also of the official seal or stamp of the several offices of the Courts of Chancery or Bankruptcy in England or Ireland, or of the Court of Session in Scotland, or of the court of the vice-warden of the stannaries, when such seal or stamp is appended to or impressed on any document made, issued, or signed under the provisions of this part of the act, or any official copy thereof.

126. The commissioners of the Court of Bankruptcy and the judges of the County Courts in England who sit at places more than twenty miles from the general post office, and the commissioners of bankrupt and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this act in cases where any company is wound up in any part of the United Kingdom, and it shall be lawful for the court to refer the whole or any part of the examination of any witnesses under this act to any person hereby appointed commissioner, although such commissioner is out of the jurisdiction of the court that made the order or decree for winding up the company; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a commissioner of the Court of Bankruptcy, judge of a County Court, commissioner of bankrupt, assistant barrister or recorder, or as a sheriff of a county, have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the court which made the order for winding up the company has; and the examination so taken shall be returned or reported to such last-mentioned court in such manner as it directs.

127. The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the estate, dealings, or affairs of any company in the course of being wound up, or in regard to the estate, dealings, or affairs of any person being a contributory of the company, so far as the company may be interested therein by reason of his being such contributory, and the order or commission to take such examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon such person to appear before him at a time and place to be specified in the summons for examination upon oath as a witness or as a haver, and to produce any books, papers, deeds, or documents called for which may be in his possession or power, and the sheriff may take such examination either orally or upon written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with such report the books, papers, deeds, or documents produced, if the originals thereof are required and specified by the order, or otherwise such copies thereof or extracts therefrom, authenticated by the sheriff, as may be necessary; and in case any person so summoned fails to appear at the time and place specified, or appearing refuses to be examined or to make the production required, the sheriff shall proceed against such person as a witness or haver duly cited, and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland; and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland: if any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may, if he thinks fit, report such objection to the court, and suspend the examination of such witness until such objection has been disposed of by the court.

128. Any affidavit, affirmation, or declaration required to be sworn or made, under the provisions or for the purposes of this part of this act, may be lawfully sworn or made in Great Britain or Ireland, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any court, judge, or person lawfully authorized to take and receive affidavits, affirmations, or declarations, or before any of her Majesty's consuls or vice-consuls, in any foreign parts out of her Majesty's dominions, and all courts,

judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this part of this act.

APPENDIX.
Part IV.

Voluntary Winding up of Company.

129. A company under this act may be wound up voluntarily,

- (1.) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily :
- (2.) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily :
- (3.) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same :

For the purposes of this act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed, by a subsequent meeting, have constituted a special resolution, as hereinbefore defined.

130. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorizing such winding up.

131. Whenever a company is wound up voluntarily the company shall, from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding up shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

132. Notice of any special resolution or extraordinary resolution passed for winding up a company voluntarily shall be given by advertisement as respects companies registered in England in the London Gazette, as respects companies registered in Scotland in the Edinburgh Gazette, and as respects companies registered in Ireland in the Dublin Gazette.

133. The following consequences shall ensue upon the voluntary winding up of a company :

- (1.) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company :
- (2.) Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property :
- (3.) The company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him :
- (4.) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him :
- (5.) Upon the appointment of liquidators all the power of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers :
- (6.) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them, as may be determined at the time of their appointment, or in default of such determination by any number not less than two :
- (7.) The liquidators may, without the sanction of the court, exercise all powers by this act given to the official liquidator :
- (8.) The liquidators may exercise the powers hereinbefore given to the court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories :
- (9.) The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same :
- (10.) The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

Circumstances under which company may be wound up voluntarily.

Commencement of voluntary winding up.

Effect of voluntary winding up on status of company.

Notice of resolution to wind up voluntarily.

Consequences of voluntary winding up.

APPENDIX.

Part IV.

Effect of winding up on share capital of company limited by guarantee.

Power of company to delegate authority to appoint liquidators.

Arrangement when binding on creditors.

Power of creditor or contributory to appeal.

Power for liquidators or contributories in voluntary winding up to apply to court.

Power of liquidators to call general meeting.

Power to fill up vacancy in liquidators.

Power of court to appoint liquidators.

Liquidators on conclusion of winding up to make up an account.

Liquidators to report meeting to registrar.

134. Where a company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

135. A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised; and any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company.

136. Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

137. Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the court against such arrangement, and the court may thereupon, as it thinks just, amend, vary or confirm the same.

138. Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the court in England, Ireland or Scotland, or to the lord ordinary on the bills in Scotland in time of vacation to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court; and the court or lord ordinary in the case aforesaid, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the court thinks fit, or it may make such other order, interlocutor or decree on such application as the court thinks just.

139. Where a company is being wound up voluntarily the liquidators may, from time to time, during the continuance of such winding up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit; and in the event of the winding up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding up has been conducted during the preceding year.

140. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the court.

141. If from any cause whatever there is no liquidator acting in the case of a voluntary winding up, the court may, on the application of a contributory, appoint a liquidator or liquidators: the court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding up.

142. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators: the meeting shall be called by advertisement, specifying the time, place and object of such meeting; and such advertisement shall be published one month at least previously to the meeting, as respects companies registered in England in the London Gazette, and as respects companies registered in Scotland in the Edinburgh Gazette, and as respects companies registered in Ireland in the Dublin Gazette.

143. The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved: if the liquidators make default in making such return to the registrar they shall

incur a penalty not exceeding five pounds for every day during which such default continues.

144. All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

145. The voluntary winding up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the court, if the court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up.

146. Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the court, the court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding up.

APPENDIX.

Part IV.

Costs of voluntary liquidation.

Saving of rights of creditors.

Power of court to adopt proceedings of voluntary winding up.

Winding up subject to the Supervision of the Court.

147. When a resolution has been passed by a company to wind up voluntarily, the court may make an order directing that the voluntary winding up should continue, but subject to such supervision of the court, and with such liberty for creditors, contributories or others to apply to the court, and generally upon such terms and subject to such conditions as the court thinks just.

148. A petition, praying wholly or in part that a voluntary winding up should continue, but subject to the supervision of the court, and which winding up is hereinafter referred to as a winding up subject to the supervision of the court, shall, for the purpose of giving jurisdiction to the court over suits and actions, be deemed to be a petition for winding up the company by the court.

149. The court may, in determining whether a company is to be wound up altogether by the court or subject to the supervision of the court, in the appointment of liquidator or liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court: in the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

150. Where any order is made by the court for a winding up subject to the supervision of the court, the court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company: the court may from time to time remove any liquidators so appointed by the court, and fill up any vacancy occasioned by such removal, or by death or resignation.

151. Where an order is made for a winding up subject to the supervision of the court, the liquidators appointed to conduct such winding up may, subject to any restrictions imposed by the court, exercise all their powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the court for a winding up, subject to the supervision of the court, shall for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the court for winding up the company by the court, and shall confer full authority on the court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the court; and in the construction of the provisions whereby the court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression official liquidators shall be deemed to mean the liquidators conducting the winding up, subject to the supervision of the court.

152. Where an order has been made for the winding up of a company subject to the supervision of the court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

Supplemental Provisions.

153. Where any company is being wound up by the court, or subject to the supervision of the court, all dispositions of the property, effects and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company made between the commencement of the winding up and the order for winding up, shall, unless the court otherwise orders, be void.

Power of court, on application, to direct winding up, subject to supervision.

Petition for winding up, subject to supervision.

Court may have regard to wishes of creditors.

Power to court to appoint additional liquidators in winding up, subject to supervision.

Effect of order of court for winding up subject to supervision.

Appointment in certain cases of voluntary liquidators to office of official liquidators.

Dispositions after the commencement of the winding up avoided.

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Part IV.

The books of the company to be evidence.

As to disposal of books, accounts, and documents of the company.

Inspection of books.

Power of assignee to sue.

Debts of all descriptions to be proved.

General scheme of liquidation may be sanctioned.

Power to compromise.

Power for liquidators to accept shares, &c., as a consideration for sale of property of company.

154. Where any company is being wound up, all books, accounts and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

155. Where any company has been wound up under this act and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of in the following way; (that is to say,) where the company has been wound up by or subject to the supervision of the court, in such way as the court directs, and where the company has been wound up voluntarily in such way as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company, or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same, or any of them, cannot be made forthcoming to any party or parties claiming to be interested therein.

156. Where an order has been made for winding up a company by the court, or subject to the supervision of the court, the court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories, in conformity with the order of the court, but not further or otherwise.

157. Any person to whom any thing in action belonging to the company is assigned, in pursuance of this act, may bring or defend any action or suit relating to such thing in action in his own name.

158. In the event of any company being wound up under this act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

159. The liquidators may, with the sanction of the court, where the company is being wound up by the court or subject to the supervision of the court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable.

160. The liquidators may, with the sanction of the court, where the company is being wound up by the court or subject to the supervision of the court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms, as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

161. Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase

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money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution; no special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an order be made within a year for winding up the company by or subject to the supervision of the court, such resolution shall not be of any validity unless it is sanctioned by the court.

162. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the settlement of disputes by arbitration (a), shall be incorporated with this act; and in the construction of such provisions this act shall be deemed to be the special act, and "the company" shall mean the company that is being wound up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one.

Mode of determining price.

163. Where any company is being wound up by the court or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force (b) against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Certain attachments, sequestrations, and executions to be void.

164. Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding up a company shall in the case of a company being wound up by the court or subject to the supervision of the court, and a resolution for winding up the company shall in the case of a voluntary winding up, be deemed to correspond with the act of bankruptcy in the case of an individual trader; and any conveyance or assignment made by any company formed under this act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

Fraudulent preference.

165. Where, in the course of the winding up of any company under this act, it appears that any past or present director, manager, official or other liquidator, or any officer of such company, has misapplied or retained in his own hands or become liable or accountable for any monies of the company or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any monies so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the court thinks just.

Power of court to assess damages against delinquent directors and officers.

166. If any director, officer, or contributory of any company wound up under this act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanor, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Penalty on falsification of books.

167. Where any order is made for winding up a company by the court or subject to the supervision of the court, if it appear in the course of such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in such winding up, or of its own motion, direct the official liquidators, or the liquidators, (as the case may be,) to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

Prosecution of delinquent directors in the case of winding up by court.

168. Where a company is being wound up altogether voluntarily, if it appear to the liquidators conducting such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the court, to prosecute such offender; and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Prosecution of delinquent directors, &c., in case of voluntary winding up.

(a) Ante, p. 40.

(b) See *Ex parte Parry*, 33 L. J. (Ch.) 245.

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Penalty of perjury.

169. If any person, upon any examination upon oath or affirmation authorized under this act, or in any affidavit, deposition or solemn affirmation in or about the winding up of any company under this act, or otherwise in or about any matter arising under this act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

Power of Courts to make Rules.

Power of lord chancellor of Great Britain to make rules.

170. In England the Lord Chancellor of Great Britain, with the advice and consent of the Master of the Rolls, and any one of the Vice-Chancellors for the time being, or with the advice and consent of any two of the Vice-Chancellors, may, as often as circumstances require, make such rules (c) concerning the mode of proceeding to be had for winding up a company in the Court of Chancery as may from time to time seem necessary; but until such rules are made the general practice of the Court of Chancery, including the practice hitherto in use in winding up companies, shall, so far as the same is applicable and not inconsistent with this act, apply to all proceedings for winding up a company.

Power of Court of Session in Scotland to make rules.

171. In Scotland the court of session may make such rules concerning the mode of winding up as may be necessary by act of sederunt; but, until such rules are made, the general practice of the court of session in suits pending in such court shall, so far as the same is applicable and not inconsistent with this act, apply to all proceedings for winding up a company, and official liquidators shall in all respects be considered as possessing the same powers as any trustee on a bankrupt estate.

Power to make rules in Stannaries Court.

172. The vice-warden of the stannaries may from time to time, with the consent provided for by section twenty-three of the act of eighteenth of Victoria, chapter thirty-two, make rules for carrying into effect the powers conferred by this act upon the court of the vice-warden, but, subject to such rules, the general practice of the said court and of the registrar's office in the said court, including the present practice of the said court in winding up companies, may be applied to all proceedings under this act; the said vice-warden may likewise, with the same consent, make from time to time rules for specifying the fees to be taken in his said court in proceedings under this act; and any rules so made shall be of the same force as if they had been enacted in the body of this act; and the fees paid in respect of proceedings taken under this act, including fees taken under "The Joint Stock Companies Act, 1856," in the matter of winding up companies, shall be applied exclusively towards payment of such additional officers, or such increase of the salaries of existing officers, or pensions to retired officers, or such other needful expenses of the court, as the lord warden of the stannaries shall from time to time, on the application of the vice-warden or otherwise, think fit to direct, sanction, or assign, and meanwhile shall be kept as a separate fund apart from the ordinary fees of the court arising from other business, to await such direction and order of the lord warden herein, and to accumulate by investment in government securities until the whole shall have been so appropriated.

Power of lord chancellor of Ireland to make rules.

173. In Ireland the Lord Chancellor of Ireland may, as respects the winding up of companies in Ireland, with the advice and consent of the Master of the Rolls in Ireland, exercise the same power of making rules as is by this act hereinbefore given to the Lord Chancellor of Great Britain; but until such rules are made the general practice of the Court of Chancery in Ireland, including the practice hitherto in use in Ireland in winding up companies, shall, so far as the same is applicable and not inconsistent with this act, apply to all proceedings for winding up a company.

PART V.

REGISTRATION OFFICE.

Constitution of registration office.

174. The registration of companies under this act shall be conducted as follows; (that is to say,)

- (1.) The Board of Trade may from time to time appoint such registrars, assistant registrars, clerks and servants as they may think necessary for the registration of companies under this act, and remove them at pleasure:
- (2.) The Board of Trade may make such regulations as they think fit with respect to the duties to be performed by any such registrars, assistant registrars, clerks and servants as aforesaid:
- (3.) The Board of Trade may from time to time determine the places at which offices for the registration of companies are to be established, so that there be at all times maintained in each of the three parts of the United Kingdom at least one such office, and that no company shall be registered except at an office within that part of the United Kingdom in which by the memorandum of association the registered office of the company is declared to be established; and the board may require that the registrar's office of the court of the vice-warden of the stan-

(c) See the rules made Nov. 11, 1862, 32 L. J. (Ch.).

naries shall be one of the offices for the registration of companies formed for working mines within the jurisdiction of the court :

- (4.) The Board of Trade may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies :
- (5.) Every person may inspect the documents kept by the registrar of joint stock companies ; and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection ; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar ; and there shall be paid for such certificate of incorporation, certified copy or extract such fees as the Board of Trade may appoint, not exceeding five shillings for the certificate of incorporation, and not exceeding sixpence for each folio of such copy or extract, or in Scotland for each sheet of two hundred words :
- (6.) The existing registrar, assistant registrars, clerks and other officers, and servants in the office for the registration of joint stock companies shall, during the pleasure of the Board of Trade, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the Board of Trade :
- (7.) There shall be paid to any registrar, assistant registrar, clerk or servant that may hereafter be employed in the registration of joint stock companies such salary as the Board of Trade may, with the sanction of the commissioners of the Treasury, direct :
- (8.) Whenever any act is herein directed to be done to or by the registrar of joint stock companies, such act shall, until the Board of Trade otherwise directs, be done in England to or by the existing registrar of joint stock companies, or in his absence to or by such person as the Board of Trade may for the time being authorize ; in Scotland to or by the existing registrar of joint stock companies in Scotland ; and in Ireland to or by the existing assistant registrar of joint stock companies for Ireland, or by such person as the Board of Trade may for the time being authorize in Scotland or Ireland in the absence of the registrar ; but in the event of the Board of Trade altering the constitution of the existing registry office, such act shall be done to or by such officer or officers and at such place or places with reference to the local situation of the registered offices of the companies to be registered as the Board of Trade may appoint.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT STOCK COMPANIES ACTS.

175. The expression "Joint Stock Companies Acts" as used in this act shall mean "The Joint Stock Companies Act, 1856," "The Joint Stock Companies Acts, 1856, 1857," "The Joint Stock Banking Companies Act, 1857," and "The Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability," or any one or more of such acts, as the case may require ; but shall not include the act passed in the eighth year of the reign of her present Majesty, chapter one hundred and ten, and intituled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies."

Definition of joint stock companies acts.

176. Subject as hereinafter mentioned, this act, with the exception of table A. in the first schedule, shall apply to companies formed and registered under the said joint stock companies acts, or any of them, in the same manner in the case of a limited company as if such company had been formed and registered under this act as a company limited by shares, and in the case of a company other than a limited company as if such company had been formed and registered as an unlimited company under this act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said joint stock companies acts or any of them, and the power of altering regulations by special resolution given by this act shall, in the case of any company formed and registered under the said joint stock companies acts or any of them, extend to altering any provisions contained in the table marked B. annexed to "The Joint Stock Companies Act, 1856," and shall also in the case of an unlimited company formed and registered as last aforesaid extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the memorandum of association.

Application of act to companies formed under joint stock companies acts.

177. This act shall apply to companies registered but not formed under the said joint stock companies acts or any of them in the same manner as it is hereinafter declared to apply to companies registered but not formed under this act, with this qualification, that

Application of act to companies registered under joint stock companies acts.

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Mode of transferring shares.

wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said joint stock companies acts or any of them.

178. Any company registered under the said joint stock companies acts or any of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

PART VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

Regulations as to registration of existing companies.

179. The following regulations shall be observed with respect to the registration of companies under this part of this act; (that is to say,)

- (1.) No company having the liability of its members limited by act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall register under this act in pursuance of this part thereof:
- (2.) No company having the liability of its members limited by act of Parliament or by letters patent shall register under this act in pursuance of this part thereof as an unlimited company, or as a company limited by guarantee:
- (3.) No company that is not a joint stock company as hereinafter defined, shall in pursuance of this part of this act register under this act as a company limited by shares:
- (4.) No company shall register under this act in pursuance of this part thereof unless an assent to its so registering is given by a majority of such of its members as may be present, personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose:
- (5.) Where a company not having the liability of its members limited by act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting:
- (6.) Where a company is about to register as a company limited by guarantee the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount:

In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

Companies capable of being registered.

180. With the above exceptions, and subject to the foregoing regulations, every company existing at the time of the commencement of this act, including any company registered under the said joint stock companies acts, consisting of seven or more members, and any company hereafter formed in pursuance of any act of Parliament other than this act, or of letters patent, or being a company engaged in working mines within and subject to the jurisdiction of the stannaries, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this act as an unlimited company, or a company limited by shares, or a company limited by guarantee; and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Definition of joint stock company.

181. For the purposes of this part of this act, so far as the same relates to the description of companies empowered to register as companies limited by shares, a joint stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such company when registered with limited liability under this act shall be deemed to be a company limited by shares.

Proviso as to banking company.

182. No banking company claiming to issue notes in the United Kingdom shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and, if necessary, the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited company.

183. Previously to the registration in pursuance of this part of this act of any joint stock company, there shall be delivered to the registrar the following documents; (that is to say,)

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Part VII.

Requisitions for registration by companies.

- (1.) A list showing the names, addresses and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number :
- (2.) A copy of any act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company :
- (3.) If any such joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars ; (that is to say,)

The nominal capital of the company and the number of shares into which it is divided :

The number of shares taken and the amount paid on each share :

The name of the company, with the addition of the word "limited" as the last word thereof :

With the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

184. Previously to the registration in pursuance of this part of this act of any company not being a joint stock company there shall be delivered to the registrar a list showing the names, addresses and occupations of the directors or other managers (if any) of the company, also a copy of any act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of guarantee.

Requisitions for registration by existing company not being a joint stock company.

185. Where a joint stock company authorized to register under this act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the registrar a statement of shares, deliver to the registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

Power for existing company to register amount of stock instead of shares.

186. The lists of members and directors and any other particulars relating to the company hereby required to be delivered to the registrar, shall be verified by a declaration of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company, made in pursuance of the act passed in the sixth year of the reign of his late majesty king William the fourth, chapter sixty-two.

Authentication of statements of existing companies.

187. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or not a joint stock company as hereinbefore defined.

Registrar may require evidence as to nature of company.

188. Every banking company existing at the date of the passing of this act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company, and such notice shall be given either by delivering the same to such person or firm, or leaving the same or putting the same into the post addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the company ; and in case the company omits to give any such notice as is hereinbefore required to be given, then as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

On registration of banking company with limited liability, notice to be given to customers.

189. No fees shall be charged in respect of the registration in pursuance of this part of this act of any company in cases where such company is not registered as a limited company, or where previously to its being registered as a limited company the liability of the shareholders was limited by some other act of Parliament or by letters patent.

Exemption of certain companies from payment of fees.

190. Any company authorized by this part of this act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name, by adding thereto the word "limited."

Power to company to change name.

191. Upon compliance with the requisitions in this part of this act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B. and C. in the first schedule hereto, the registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this act, and, in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands ; and any banking company in Scotland so incorporated shall be deemed

Certificate of registration of existing companies.

APPENDIX.

Part VII.

Certificate to be evidence of compliance with act.

Transfer of property to company.

Registration under this act not to affect obligations incurred previously to registration.

Continuation of existing actions and suits.

Effect of registration under act.

and taken to be a bank incorporated, constituted or established by or under act of Parliament.

192. A certificate of incorporation given at any time to any company registered in pursuance of this part of this act, shall be conclusive evidence that all the requisitions herein contained in respect of registration under this act have been complied with, and that the company is authorized to be registered under this act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this act.

193. All such property, real and personal, including all interests and rights in, to and out of property, real and personal, and including obligations and things in action, as may belong to or be vested in the company at the date of its registration under this act, shall, on registration, pass to and vest in the company as incorporated under this act for all the estate and interest of the company therein.

194. The registration in pursuance of this part of this act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of such company previously to such registration.

195. All such actions, suits and other legal proceedings as may at the time of the registration of any company registered in pursuance of this part of this act, have been commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such company upon any judgment, decree or order obtained in any action, suit or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree or order, an order may be obtained for winding up the company.

196. When a company is registered under this act in pursuance of this part thereof, all provisions contained in any act of Parliament, deed of settlement, contract of copartnership, cost book regulations, letters patent or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this act shall apply to such company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this act, subject to the provisions following; (that is to say,)

- (1.) That table A. in the first schedule to this act shall not, unless adopted by special resolution, apply to any company registered under this act in pursuance of this part thereof:
- (2.) That the provisions of this act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered:
- (3.) That no company shall have power to alter any provision contained in any act of Parliament relating to the company:
- (4.) That no company shall have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company:
- (5.) That in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply:
- (6.) That nothing herein contained shall authorize any company to alter any such provisions contained in any deed of settlement, contract of copartnership, cost book regulations, letters patent or other instrument constituting or regulating the company, as would, if such company had originally been formed under this act, have been contained in the memorandum of association, and are not authorized to be altered by this act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this act in pursuance of this part thereof by virtue of any act of Parliament, deed of settlement, contract of copartnership, letters patent or other instrument constituting or regulating the company.

197. The court may, at any time after the presentation of a petition for winding up a company registered in pursuance of this part of this act, and before making an order for winding up the company, upon the application by motion of any creditor of the company, restrain further proceedings in any action, suit or legal proceeding against any contributory of the company as well as against the company as hereinbefore provided, upon such terms as the court thinks fit.

198. Where an order has been made for winding up a company registered in pursuance of this part of the act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit, action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose.

APPENDIX.

Part VII.

Power of court to restrain further proceedings.

Order for winding up company.

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

199. Subject as hereinafter mentioned, any partnership, association or company, except railway companies incorporated by act of Parliament, consisting of more than seven members, and not registered under this act, and hereinafter included under the term unregistered company, may be wound up under this act, and all the provisions of this act with respect to winding up shall apply to such company, with the following exceptions and additions:

Winding up of unregistered companies.

- (1.) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or, if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; moreover the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one part of the United Kingdom) such one of its principal places of business as is situate in that part of the United Kingdom in which proceedings are being instituted, shall for all the purposes of the winding up of such company be deemed to be the registered office of the company:
- (2.) No unregistered company shall be wound up under this act voluntarily or subject to the supervision of the court:
- (3.) The circumstances under which an unregistered company may be wound up are as follows; (that is to say,)
 - (a.) Whenever the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b.) Whenever the company is unable to pay its debts;
 - (c.) Whenever the court is of opinion that it is just and equitable that the company should be wound up:
- (4.) An unregistered company shall, for the purposes of this act, be deemed to be unable to pay its debts,
 - (a.) Whenever a creditor to whom the company is indebted, at law or in equity, by assignment or otherwise, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor;
 - (b.) Whenever any action, suit or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company, and notice in writing of the institution of such action, suit or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not, within ten days after service of such notice, paid, secured, or compounded for such debt or demand, or procured such action, suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;
 - (c.) Whenever, in England or Ireland, execution or other process issued on a judgment, decree or order obtained in any court in favour of any creditor in any proceeding at law or in equity instituted by such creditor against the company,

APPENDIX.

Part VIII.

Who to be deemed a contributory in the event of company being wound up (a).

Power of court to restrain further proceedings (b).

Effect of order for winding up company.

Provision in case of unregistered company.

Provisions in this part of act cumulative.

or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(d.) Whenever, in the case of an unregistered company engaged in working mines within and subject to the jurisdiction of the stannaries, a customary decree or order absolute for the sale of the machinery, materials and effects of such mine has been made in a creditor's suit in the court of the vice-warden;

(e.) Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;

(f.) Whenever it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

200. In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, and every such contributory shall be liable to contribute to the assets of the company in the course of the winding up all sums due from him in respect of any such liability as aforesaid; but in the event of the death, bankruptcy or insolvency of any contributory, or marriage of any female contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory, and to the assignees of a bankrupt or insolvent contributory, and to the husband of married contributories, shall apply.

201. The court may, at any time after the presentation of a petition for winding up an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit or proceeding against any contributory of the company, or against the company as hereinbefore provided, upon such terms as the court thinks fit.

202. Where an order has been made for winding up an unregistered company, in addition to the provisions hereinbefore contained in the case of companies formed under this act, it is hereby further provided that no suit, action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose.

203. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the order made for winding up such company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims and rights into and out of property, real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly; and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names, and after giving such indemnity as the court directs, bring or defend any actions, suits or other legal proceeding relating to any property vested in him or them, or any actions, suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the company and recovering the property thereof.

204. The provisions made by this part of the act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding up companies by the court, and the court or official liquidator may, in addition to anything contained in this part of the act, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed under this act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this act, and then only to the extent provided by this part of this act.

PART IX.

REPEAL OF ACTS, AND TEMPORARY PROVISIONS.

Repeal of acts.

205. After the commencement of this act there shall be repealed the several acts specified in the first part of the third schedule hereto, with this qualification, that so much of the said acts as is set forth in the second part of the said third schedule shall be hereby re-enacted and continue in force as if unrepealed.

Saving clause as to repeal.

206. No repeal hereby enacted shall affect,

(1.) Anything duly done under any acts hereby repealed:

(a) *Cox's case*, 33 L. J. (Ch.) 145.

(b) *Ex parte Parry*, 33 L. J. (Ch.) 245.

- (2.) The incorporation of any company registered under any act hereby repealed :
- (3.) Any right or privilege acquired or liability incurred under any act hereby repealed :
- (4.) Any penalty, forfeiture or other punishment incurred in respect of any offence against any act hereby repealed :
- (5.) Table B. in the schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the time of the commencement of this act.

207. Where previously to the commencement of this act an order has been made for winding up a company under any acts or act hereby repealed, or a resolution has been passed for winding up a company voluntarily, such company shall be wound up in the same manner and with the same incidents as if this act were not passed, and for the purposes of such winding up such repealed acts or act shall be deemed to remain in full force.

Saving of existing proceedings for winding up.

208. Where previously to the commencement of this act any conveyance, mortgage or other deed has been made in pursuance of any act hereby repealed, such deed shall be of the same force as if this act had not passed, and for the purposes of such deed such repealed act shall be deemed to remain in full force.

Saving of conveyance deeds.

209. Every insurance company completely registered under the act passed in the eighth year of the reign of her present Majesty, chapter one hundred and ten, intituled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies," shall on or before the second day of November, one thousand eight hundred and sixty-two, and every other company required by any act hereby repealed to register under the said Joint Stock Companies Acts, or one of such acts, and which has not so registered, shall, on or before the expiration of the thirty-first day from the commencement of this act, register itself as a company under this act, in manner and subject to the regulations hereinbefore contained, with this exception, that no company completely registered under the said act of the eighth year of the reign of her present Majesty, shall be required to deliver to the registrar a copy of its deed of settlement; and for the purpose of enabling such insurance companies as are mentioned in this section to register under this act, this act shall be deemed to come into operation immediately on the passing thereof; nevertheless the registration of such companies shall not have any effect until the time of the commencement of this act. No fees shall be charged in respect of the registration of any company required to register by this section.

Compulsory registration of certain companies.

210. If any company required by the last section to register under this act makes default in complying with the provisions thereof, then, from and after the day upon which such company is required to register under this act, until the day on which such company is registered under this act (which it is empowered to do at any time), the following consequences shall ensue; (that is to say,)

Penalty on company not registering.

21 Vict. c. 14, s. 28.

(1.) The company shall be incapable of suing either at law or in equity, but shall not be incapable of being made a defendant to a suit either at law or in equity :

(2.) No dividend shall be payable to any shareholder in such company :

(3.) Each director or manager of the company shall for each day during which the company so being in default carries on business incur a penalty not exceeding five pounds, and such penalty may be recovered by any person, whether a shareholder or not in the company, and be applied by him to his own use :

Nevertheless, such default shall not render the company so being in default illegal, nor subject it to any penalty or disability, other than as specified in this section; and registration under this act shall cancel any penalty or forfeiture, and put an end to any disability which any company may have incurred under any act hereby repealed by reason of its not having registered under the said Joint Stock Companies Acts, 1856, 1857, or one of them.

211. Upon the application of the directors of any company registered under the Joint Stock Companies Acts as hereinbefore defined, or any of them, made within one year after the date of the commencement of this act, sanctioned by a resolution passed at an extraordinary general meeting, but subject to the restrictions hereinafter mentioned, the Board of Trade shall have authority by their certificate in writing to change the registered office of any such company from any one part of the United Kingdom of Great Britain and Ireland to any other part thereof, and the registrar of joint stock companies with whom the memorandum of registration of such company has been registered shall, upon receipt of such certificate, note in writing upon the margin or at the foot of the said memorandum the name of the place to which such registered office is to be transferred, and the day upon which such transfer is, pursuant to such certificate, to take place, and shall attach the certificate to the memorandum, and the said registrar shall thereupon transmit to the registrar of joint stock companies for that part of the United Kingdom to which the registered office is to be so transferred copies of the said certificate and of the said memorandum of registration so noted certified by him; and the said registrar for the said last-mentioned part of the United Kingdom shall, upon receipt of such copies of certificate and memorandum, retain and register the same in like manner, and on payment of the like fees to him as provided in the case of the registration of an original memorandum of re-

Temporary power for companies to change registered office.

APPENDIX.
Part IX.

Restrictions on
issue of certifi-
cate.

gistration, and thereupon the place of the registered office shall, from the said last-mentioned registration and the said day mentioned in the said certificate, be the place mentioned as such on the said certificate: Provided, however, that such change shall in nowise alter or affect anything theretofore done by the said company, or any of their rights or liabilities in respect thereof.

212. The Board of Trade shall not issue their certificate in pursuance of the foregoing section until they are satisfied that an advertisement of the intention of the company to apply to the Board of Trade for a certificate, with a declaration that all parties objecting thereto are forthwith to apply to the Board of Trade, has been published once at the least in each of four successive weeks in the newspapers following; (that is to say,) in some newspaper circulating in the district where the registered office of the company is situate, and also if the company is registered in England in the London Gazette, if in Ireland in the Dublin Gazette, if in Scotland in the Edinburgh Gazette, nor until the said board are satisfied that the objections, if any, that may be urged against the issue of such certificate are groundless.

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

- (1.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.
- (2.) Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.
- (3.) If such certificate is worn out or lost, it may be renewed, on payment of one shilling, or such less sum as the company in general meeting may prescribe.

Calls on Shares.

- (4.) The directors may from time to time make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.
- (5.) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed (a).
- (6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.
- (7.) The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

- (8.) The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.
- (9.) Shares in the company shall be transferred in the following form:—
I, *A. B.*, of _____ in consideration of the sum of _____ pounds paid to me
by *C. D.*, of _____ do hereby transfer to the said *C. D.* the share [or shares]
numbered _____ standing in my name in the books of the
company, to hold unto the said *C. D.*, his executors, administrators and assigns,
subject to the several conditions on which I held the same at the time of the
execution hereof; and I the said *C. D.* do hereby agree to take the said share
[or shares] subject to the same conditions. As witness our hands the
day of _____
- (10.) The company may decline to register any transfer of shares made by a member who is indebted to them.

(a) *R. v. Inns of Court Hotel Co.*, 32 L. J. (Q. B.) 309.

- (11.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

- (12.) The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share.
- (13.) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.
- (14.) Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.
- (15.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.
- (16.) The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

Forfeiture of Shares.

- (17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such nonpayment.
- (18.) The notice shall name a further day, on or before which such call, and all interest and expenses that have accrued by reason of such nonpayment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that in the event of nonpayment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.
- (19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited, by a resolution of the directors to that effect.
- (20.) Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.
- (21.) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.
- (22.) A statutory declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

- (23.) The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.
- (24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.
- (25.) The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot

APPENDIX.
First Schedule.
Table A.

part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

- (26.) The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.
- (27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.
- (28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

- (29.) The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place as the directors may determine.
- (30.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.
- (31.) The above mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
- (32.) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.
- (33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.
- (34.) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meetings.

- (35.) Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.
- (36.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance sheets, and the ordinary report of the directors.
- (37.) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows; that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.
- (38.) If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: in any other case it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present, it shall be adjourned sine die.
- (39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

- (40.) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.
- (41.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (42.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (43.) If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

Votes of Members.

- (44.) Every member shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.
- (45.) If any member is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator.
- (46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.
- (47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.
- (48.) Votes may be given either personally or by proxy.
- (49.) The instrument appointing a proxy shall be in writing, under the hand of the appointer, or if such appointer is a corporation, under their common seal, and shall be attested by one or more witness or witnesses: no person shall be appointed a proxy who is not a member of the company.
- (50.) The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.
- (51.) Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I, of in the county of being a member of
the company limited, and entitled to vote or votes,
hereby appoint of as my proxy, to vote for me and on my
behalf at the [ordinary or extraordinary, as the case may be] general meeting of
the company to be held on the day of , and at any ad-
journment thereof [or, at any meeting of the company that may be held in the
year].

As witness my hand, this day of .

Signed by the said

in the presence of .

Directors.

- (52.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.
- (53.) Until directors are appointed the subscribers of the memorandum of association shall be deemed to be directors.
- (54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of Directors.

- (55.) The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing act, or by these articles,

APPENDIX.
First Schedule.
Table A.

- required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.
- (56.) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

- (57.) The office of director shall be vacated,—
If he holds any other office or place of profit under the company;
If he becomes bankrupt or insolvent;
If he is concerned in or participates in the profits of any contract with the company:
But the above rules shall be subject to the following exceptions:
That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote, his vote shall not be counted.

Rotation of Directors.

- (58.) At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third shall retire from office.
- (59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot: In every subsequent year the one-third or other nearest number who have been longest in office shall retire.
- (60.) A retiring director shall be re-eligible.
- (61.) The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.
- (62.) If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.
- (63.) The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.
- (64.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.
- (65.) The company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead: The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

- (66.) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: Questions arising at any meeting shall be decided by a majority of votes: In case of an equality of votes the chairman shall have a second or casting vote: A director may at any time summon a meeting of the directors.
- (67.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.
- (68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.
- (69.) A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the

members present shall choose one of their number to be chairman of such meeting.

- (70.) A committee may meet and adjourn as they think proper: questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.
- (71.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

- (72.) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.
- (73.) No dividend shall be payable except out of the profits arising from the business of the company.
- (74.) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.
- (75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.
- (76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the company.
- (77.) No dividend shall bear interest as against the company.

Accounts.

- (78.) The directors shall cause true accounts to be kept,—
Of the stock-in-trade of the company;
Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and
Of the credits and liabilities of the company:
The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.
- (79.) Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.
- (80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.
- (81.) A balance sheet shall be made out in every year, and laid before the company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.
- (82.) A printed copy of such balance sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

- (83.) Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance sheet ascertained by one or more auditor or auditors.
- (84.) The first auditors shall be appointed by the directors. Subsequent auditors shall be appointed by the company in general meeting.

APPENDIX.

First Schedule.

Table A.

- (85.) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.
- (86.) The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.
- (87.) The election of auditors shall be made by the company at their ordinary meeting in each year.
- (88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.
- (89.) Any auditor shall be re-eligible on his quitting office.
- (90.) If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.
- (91.) If no election of auditors is made in manner aforesaid the Board of Trade may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.
- (92.) Every auditor shall be supplied with a copy of the balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.
- (93.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company. He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.
- (94.) The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

- (95.) A notice may be served by the company upon any member, either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.
- (96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.
- (97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

BALANCE SHEET of the			18 .	Co. made up to	Cr.			
CAPITAL AND LIABILITIES.			PROPERTY AND ASSETS.					
I. CAPITAL.	Showing:	£ s. d.	£ s. d.	III. PROPERTY held by the Company.	7.	Showing:	£ s. d.	
1.	The Number of Shares .. ..	.. ..	.. ..	Immovable property, distinguishing— (a.) Freehold Land (b.) Buildings (c.) Leasehold Moveable property, distinguishing— (d.) Stock in Trade (e.) Plant The Cost to be stated with Deductions for Deterioration in Value as charged to the Reserve Fund or Profit and Loss.	7.	Immovable property, distinguishing— (a.) Freehold Land (b.) Buildings (c.) Leasehold Moveable property, distinguishing— (d.) Stock in Trade (e.) Plant The Cost to be stated with Deductions for Deterioration in Value as charged to the Reserve Fund or Profit and Loss.	£ s. d.	
2.	The Amount paid per Share .. ..	.. ..						
3.	If any Arrears of Calls, the Nature of the Arrear, and the Names of the Defaulters.							
4.	The Particulars of any forfeited Shares.							
5.	The Amount of Loans on Mortgages or Debenture Bonds.							
6.	The Amount of Debts owing by the Company, distinguishing— (a.) Debts for which Acceptances have been given. (b.) Debts to Tradesmen for Supplies of Stock in Trade or other Articles. (c.) Debts for Law Expenses. (d.) Debts for Interest on Debentures or other Loans. (e.) Unclaimed Dividends. (f.) Debts not enumerated above.							
VI. RESERVE FUND.	Showing:			IV. DEBTS owing to the Company.	9.	Showing:		
VII. PROFIT AND LOSS.	The Amount set aside from Profits to meet Contingencies.			Debts considered good for which the Company hold no Security. Debts considered doubtful and bad Any debt due from a Director or other Officer of the Company to be separately stated.	10.	Debts considered good for which the Company hold no Security. Debts considered doubtful and bad Any debt due from a Director or other Officer of the Company to be separately stated.		
	The disposable Balance for Payment of Dividend, &c.				11.			
CONTINGENT LIABILITIES.	Claims against the Company not acknowledged as Debts. Monies for which the Company is contingently liable.			V. CASH AND INVESTMENTS.	12.	Showing:		
						13.	The Nature of Investment and Rate of Interest. The Amount of Cash, where lodged, and if bearing interest.	

APPENDIX.
First Schedule.
Table B.

TABLE B.				
TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a		Company having a Capital divided into Shares.		
		£ s. d.		
For registration of a company whose nominal capital does not exceed 2,000 <i>l.</i> , a fee of		2 0 0		
For registration of a company whose nominal capital exceeds 2,000 <i>l.</i> , the above fee of 2 <i>l.</i> , with the following additional fees, regulated according to the amount of nominal capital; (that is to say,)		£ s. d.		
For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 2,000 <i>l.</i> , up to 5,000 <i>l.</i>		1 0 0		
For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 5,000 <i>l.</i> , up to 100,000 <i>l.</i>		0 5 0		
For every 1,000 <i>l.</i> of nominal capital, or part of 1,000 <i>l.</i> , after the first 100,000 <i>l.</i>		0 1 0		
For registration of any increase of capital made after the first registration of the company, the same fees per 1,000 <i>l.</i> , or part of a 1,000 <i>l.</i> , as would have been payable if such increased capital had formed part of the original capital at the time of registration.				
Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 50 <i>l.</i> , taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.				
For registration of any existing company, except such companies as are by this act exempted from payment of fees in respect of registration under this act, the same fee as is charged for registering a new company.				
For registering any document hereby required or authorized to be registered, other than the memorandum of association		0 5 0		
For making a record of any fact hereby authorized or required to be recorded by the registrar of companies, a fee of		0 5 0		

Table C.

TABLE C.				
TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a		Company not having a Capital divided into Shares.		
		£ s. d.		
For registration of a company whose number of members, as stated in the articles of association, does not exceed 20		2 0 0		
For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100		5 0 0		
For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of 5 <i>l.</i> , with an additional 5 <i>s.</i> for every 50 members or less number than 50 members after the first 100.				
For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of		20 0 0		
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members or less than 50 members of such increase		0 5 0		
Provided that no one company shall be liable to pay on the whole a greater fee than 20 <i>l.</i> in respect of its number of members, taking into account the fee paid on the first registration of the company.				
For registration of any existing company, except such companies as are by this act exempted from payment of fees in respect of registration under this act, the same fee as is charged for registering a new company.				
For registering any document hereby required or authorized to be registered, other than the memorandum of association		0 5 0		
For making a record of any fact hereby authorized or required to be recorded by the registrar of companies, a fee of		0 5 0		

Form D.

FORM D.						
FORM OF STATEMENT referred to in Part III. of the Act.						
* The capital of the company is	, divided into	shares of	each.			
The number of shares issued is						
Calls to the amount of	pounds per share have been made, under which the					
sum of	pounds has been received.					
* If the company has no capital divided into shares the portion of the statement relating to capital and shares must be omitted.						

The liabilities of the company on the first day of January (or July) were,—
Debts owing to sundry persons by the company:

- On judgment, £
- On specialty, £
- On notes or bills, £
- On simple contracts, £
- On estimated liabilities, £

The assets of the company on that day were,—
Government securities [*stating them*], £
Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

APPENDIX.
First Schedule.
Form D.

SECOND SCHEDULE.

FORM A.

Second Schedule.
Form A.

MEMORANDUM of ASSOCIATION of a Company limited by Shares.

- 1st. The name of the company is "The Eastern Steam Packet Company, Limited."
- 2nd. The registered office of the company will be situate in England.
- 3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."
- 4th. The liability of the members is limited.
- 5th. The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.				Number of Shares taken by each Subscriber.
1. John Jones of	in the county of	Merchant		200
2. John Smith of	in the county of	.. ..		25
3. Thomas Green of	in the county of	.. ..		30
4. John Thompson of	in the county of	.. ..		40
5. Caleb White of	in the county of	.. ..		15
6. Andrew Brown of	in the county of	.. ..		5
7. Cæsar White of	in the county of	.. ..		10
Total shares taken				325

Dated the 22nd day of November, 1861.
Witness to the above signatures,
A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM B.

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by Guarantee, and not having a Capital divided into Shares.

Form B.

Memorandum of Association.

- 1st. The name of the company is "The Mutual London Marine Association, Limited."
- 2nd. The registered office of the company will be situate in England.
- 3rd. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."
- 4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding up the same, and for the adjustment of the rights of the contributors amongst themselves, such amount as may be required not exceeding ten pounds.

APPENDIX.
Second Schedule.
Form B.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of	in the county of	Merchant.
2. John Smith of	in the county of	
3. Thomas Green of	in the county of	
4. John Thompson of	in the county of	
5. Caleb White of	in the county of	
6. Andrew Brown of	in the county of	
7. Cæsar White of	in the county of	

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

ARTICLES of ASSOCIATION to accompany preceding MEMORANDUM of ASSOCIATION.

- (1.) The company, for the purpose of registration, is declared to consist of five hundred members.
- (2.) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

- (3.) Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

- (4.) The first general meeting shall be held at such time, not being more than three months after the incorporation of the company, and at such place, as the directors may determine.
- (5.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be confirmed by the directors.
- (6.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.
- (7.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.
- (8.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.
- (9.) Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting: If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

- (10.) Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.
- (11.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors.
- (12.) No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows; that is to say, if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.
- (13.) If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved: In any other case it shall stand adjourned to the same day in

- the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned sine die.
- (14.) The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.
- (15.) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.
- (16.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (17.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (18.) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Votes of Members.

- (19.) Every member shall have one vote and no more.
- (20.) If any member is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator.
- (21.) No member shall be entitled to vote at any meeting unless all monies due from him to the company have been paid.
- (22.) Votes may be given either personally or by proxies: a proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.
- (23.) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.
- (24.) Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I of in the county of being a member of the company limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the day of , and at any adjournment thereof to be held on the day of next [or, at any meeting of the company that may be held in the year].

As witness my hand, this day of .

Signed by the said in the presence of .

Directors.

- (25.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.
- (26.) Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this act be deemed to be directors.

Powers of Directors.

- (27.) The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

- (28.) The directors shall be elected annually by the company in general meeting.

Business of Company.

[Here insert rules as to mode in which business of insurance is to be conducted.]

Accounts.

- (29.) The accounts of the company shall be audited by a committee of five members, to be called the audit committee.

APPENDIX.
Second Schedule.
Form B.

- (30.) The first audit committee shall be nominated by the directors out of the body of members.
- (31.) Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.
- (32.) The audit committee shall be supplied with a copy of the balance sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.
- (33.) The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company: they may, at the expense of the company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the company.
- (34.) The audit committee shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

- (35.) A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.
- (36.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post office.

Winding up.

- (37.) The company shall be wound up voluntarily whenever an extraordinary resolution, as defined by the Companies Act, 1862, is passed, requiring the company to be wound up voluntarily.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of	in the county of	Merchant.
2. John Smith of	in the county of	
3. Thomas Green of	in the county of	
4. John Thompson of	in the county of	
5. Caleb White of	in the county of	
6. Andrew Brown of	in the county of	
7. Cæsar White of	in the county of	

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM C.

Form C.

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by Guarantee, and having a Capital divided into Shares.

Memorandum of Association.

- 1st. The name of the company is "The Highland Hotel Company, Limited."
- 2nd. The registered office of the company will be situate in Scotland.
- 3rd. The objects for which the company is established are "the facilitating travelling in the highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."
- 4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding twenty pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

APPENDIX.
Second Schedule.
Form C.

Names, Addresses and Descriptions of Subscribers.

1. John Jones of	in the county of	Merchant.
2. John Smith of	in the county of	
3. Thomas Green of	in the county of	
4. John Thompson of	in the county of	
5. Caleb White of	in the county of	
6. Andrew Brown of	in the county of	
7. Cæsar White of	in the county of	

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No 13, Hute Street, Clerkenwell, Middlesex.

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.				Number of Shares taken by each Subscriber.
1. John Jones of	in the county of	..	..	200
2. John Smith of	in the county of	..	..	25
3. Thomas Green of	in the county of	..	..	30
4. John Thompson of	in the county of	..	..	40
5. Caleb White of	in the county of	..	..	15
6. Andrew Brown of	in the county of	..	..	5
7. Cæsar White of	in the county of	..	..	10
Total shares taken				325

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM D.

Form D.

MEMORANDUM and ARTICLES of ASSOCIATION of an unlimited Company, having a Capital divided into Shares.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of London, is the sole patentee."

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of	in the county of	Merchant
2. John Smith of	in the county of	
3. Thomas Green of	in the county of	
4. John Thompson of	in the county of	
5. Caleb White of	in the county of	
6. Andrew Brown of	in the county of	
7. Abel Brown of	in the county of	

Dated 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 20, Bond Street, Middlesex.

APPENDIX.

Second Schedule.

Form D.

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

Application of Table A.

All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.					Number of Shares taken by Subscribers.
1. John Jones of	in the county of	Merchant			1
2. John Smith of	in the county of	.. ..			5
3. Thomas Green of	in the county of	.. ..			2
4. John Thompson of	in the county of	.. ..			2
5. Caleb White of	in the county of	.. ..			3
6. Andrew Brown of	in the county of	.. ..			4
7. Abel Brown of	in the county of	.. ..			1
Total shares taken					18

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 20, Bond Street, Middlesex.

FORM E. as required by the Second Part of the Act.

SUMMARY of CAPITAL and SHARES of the

COMPANY, made up to the day of

Nominal Capital £

Number of Shares taken up to the

There has been called up on each Share £

Total Amount of Calls received £

Total Amount of Calls unpaid £

divided into day of

Shares of £

each.

List of Persons holding Shares in the

thereon at any time during the Year immediately preceding the said

an Account of the Shares so held.

Company on the

day of

day of

, and of Persons who have held Shares

, showing their Names and Addresses, and

Folio in Register Ledger containing Particulars.	NAMES, ADDRESSES, AND OCCUPATIONS.			ACCOUNT OF SHARES.				Remarks.	
	Surname.	Christian Name.	Address.	Occupation.	Shares held by existing Members on the day of	Additional Shares held by existing Members during preceding Year.			Shares held by Persons no longer Members.
						Number.	Date of Transfer.		

APPENDIX.

Second Schedule.

Form F.

The Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations hereby license the Association limited, to hold the lands hereunder described [*insert description of lands*]. The conditions of this license are [*insert conditions, if any*].

FORM F.

LICENCE TO HOLD LANDS.

Third Schedule.

THIRD SCHEDULE.

FIRST PART.

Date and Chapter of Act.	Title of Act.
21 & 22 Geo. 3, c. 46 .. (Parliament of Ireland.)	An Act to promote Trade and Manufactures by regulating and encouraging Partnerships.
7 & 8 Vict. c. 110	An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
7 & 8 Vict. c. 111	An Act for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements.
7 & 8 Vict. c. 113	An Act to regulate Joint Stock Banks in England.
8 & 9 Vict. c. 98	An Act for facilitating the winding up the Affairs of Joint Stock Companies in Ireland unable to meet their pecuniary Engagements.
9 & 10 Vict. c. 28	An Act to facilitate the Dissolution of certain Railway Companies.
9 & 10 Vict. c. 75	An Act to regulate Joint Stock Banks in Scotland and Ireland.
10 & 11 Vict. c. 78	An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
11 & 12 Vict. c. 45	An Act to amend the Acts for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the dissolution and winding up of Joint Stock Companies and other Partnerships.
12 & 13 Vict. c. 108 ..	An Act to amend the Joint Stock Companies Winding-up Act, 1848.
19 & 20 Vict. c. 47	An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations.
20 & 21 Vict. c. 14	An Act to amend the Joint Stock Companies Act, 1856.
20 & 21 Vict. c. 49	An Act to amend the Law relating to Banking Companies.
20 & 21 Vict. c. 78	An Act to amend the Act Seven and Eight Victoria, Chapter One hundred and eleven, for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also the Joint Stock Companies Winding-up Acts, 1848 and 1849.
20 & 21 Vict. c. 80	An Act to amend the Joint Stock Companies Act, 1856.
21 & 22 Vict. c. 60	An Act to amend the Joint Stock Companies Acts, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857.
21 & 22 Vict. c. 91	An Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability.

SECOND PART.

7 & 8 Vict. c. 113, s. 47.

Existing companies to have the powers of suing and being sued.

Every company of more than six persons established on the sixth day of May, one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the act passed in the session holden in the seventh and eighth years of the reign of her present Majesty, chapter one hundred and thirteen, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such copartnership as the nominal plaintiff, petitioner, or defendant on behalf of such copartnership, and all judgments, decrees, and orders made and obtained in any such suit may be enforced, in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles

from London, under the provisions of an act passed in the seventh year of the reign of king George the fourth, chapter forty-six, intituled "An Act for the better regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of his late Majesty King George the Third, intituled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the supply for the Service of the Year One thousand eight hundred,' as relates to the same:" provided that such first-mentioned company shall make out and deliver from time to time to the commissioners of stamps and taxes the several accounts or returns required by the last-mentioned act, and all the provisions of the last-recited act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited act.

APPENDIX.
—
Third Schedule.
Second Part.

20 & 21 Vict. c. 49, Part of Section XII.

Notwithstanding anything contained in any act passed in the session holden in the seventh and eighth years of the reign of her present Majesty, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of this act have carried on such business.

Power to form
banking partner-
ships of ten
persons.

25 & 26 VICT. CAP. 102.

An Act to amend the Metropolis Local Management Acts. [7th August, 1862.]

34. Where any works authorized by this or the recited act will interfere with any railway or canal, the board or vestry proposing to construct such works shall, before commencing the same, give notice in writing of their intention so to do to the company owning such railway or canal, and shall, together with such notice, deliver a plan and section showing the nature of such interference; and if, within seven days after the receipt of such notice, the company shall, by writing addressed to the board or vestry, object to the manner in which it is intended to interfere with such railway or canal respectively on account of the probable interruption or endangering of the traffic thereon, the same works shall not be commenced, and it shall thereupon be referred to an engineer to be appointed by the Board of Trade, on the application of either party, to determine the manner of executing the said works, and the determination come to by such engineer shall be binding on both parties.

Plan, &c. of
works affecting
railways or canals
to be submitted
to companies.

35. Provided always, that it shall not be lawful for any board or vestry to alter the level of any railway or canal, unless with the consent of the company owning the same respectively, or, if that be refused, with the consent of the Board of Trade; and provided also, that nothing in this act contained shall take away or affect the right of any railway or canal company to compensation for the taking or injuriously affecting of any land or property of such company, or for or by reason of the interruption of any traffic on their railway or canal, or for any damages, costs or expenses which such company may be required to pay in consequence of such interruption.

Line of railway
not to be altered.

26 & 27 VICT. CAP. 33.

An Act for granting to her Majesty certain Duties of Inland Revenue; and to amend the Laws relating to the Inland Revenue. [29th June, 1863.]

13. Whereas by the fourth section of the act passed in the fifth and sixth years of her Majesty's reign, chapter seventy-nine(a), the proprietor or company of proprietors of every railway in Great Britain, and other persons therein named, are required to keep and render certain accounts as therein mentioned; and it is expedient to alter the period for which such accounts are directed to be made up, and the time of delivering the same: be it enacted, That the proprietor or company of proprietors of every railway in Great Britain, and the persons required by law to keep such accounts as aforesaid, shall deliver to the Commissioners of Inland Revenue, or to the proper officer appointed for receiving the same, within twenty days after the termination of every calendar month, a true copy or true copies of the accounts of all sums of money received or charged and paid or accounted for as in the said act is mentioned during the whole of the calendar month last preceding; and all the provisions and regulations contained in the said act with regard to the accounts therein directed to be rendered, and all bonds and securities entered

Accounts of
sums received
for the convey-
ance of passen-
gers upon rail-
ways to be made
up at the close of
each calendar
month.

(a) Ante, p. 15.

APPENDIX.

Restriction on exemption from duty on railway passengers granted by 7 & 8 Vict. c. 85, s. 9.

into or given or to be entered into or given with relation thereto, shall apply, continue and be in force as well with respect to any surety as to the principal in any such bond, and to the accounts to be kept and rendered at the time and in the manner by this act directed, and the duties payable in respect thereof.

14. The exemption from duty granted by the ninth section of the act passed in the seventh and eighth years of her Majesty's reign, chapter eighty-five (b), in respect of the conveyance of passengers by cheap trains, shall not extend to any railway train which shall not be a train running on at least six days of the week, or else a train running to or from a market town on a market day, and approved of by the Lords of the Committee of Privy Council for Trade and Plantations as a cheap train for the conveyance of passengers to or from market, or a train approved by the said Lords of the Committee of Privy Council as an ordinary train of the railway travelling on Sunday, and conveying third-class passengers at fares not exceeding one penny per mile.

26 & 27 VICT. CAP. 92.

An Act for consolidating in one Act certain Provisions frequently inserted in Acts relating to Railways. [28th July, 1863.]

8 & 9 Vict. c. 20.

Whereas "The Railways Clauses Consolidation Act, 1845" (c), and "The Railways Clauses Consolidation (Scotland) Act, 1845," respectively, were passed in order to comprise in one general act such provisions relating to railways in England or Ireland, or in Scotland, respectively, as were at the times of the passing of those acts usually introduced into acts of Parliament authorizing the construction of railways:

And whereas sundry provisions of the like nature, but not comprised in the said general acts respectively, are now frequently introduced into acts of Parliament relating to railways, and it is expedient to comprise such last-mentioned provisions also in one general act, such act to be applicable to England or Ireland, or to Scotland, as the case may require, and that as well for the purpose of avoiding the necessity of repeating such provisions in special acts relating to railways, as for ensuring greater uniformity in the provisions themselves:

Be it therefore enacted (&c. &c.) as follows:

1. This act may be cited as "The Railways Clauses Act, 1863."
2. This act shall be deemed to be divided into five parts, as follows:
 - Part I. relating to construction of a railway (sect. 3);
 - Part II. relating to extension of time (sect. 20);
 - Part III. relating to working agreements (sect. 22);
 - Part IV. relating to steam vessels (sect. 30);
 - Part V. relating to amalgamation (sect. 36).

Short title.

Division of act into parts.

PART I.

CONSTRUCTION OF A RAILWAY.

Application of Part I., and interpretation of terms.

3. This part of this act shall apply to the railway authorized to be constructed by any special act hereafter passed and incorporating this part of this act.

In this part of this act—

All terms used have the same meanings as the same terms have when used in "The Railways Clauses Consolidation Act, 1845" (d), and "The Railways Clauses Consolidation (Scotland) Act, 1845," respectively:

The term "tidal river" means any part of a river within the flow and ebb of the tide at ordinary spring tides:

The term "tidal water" means any part of the sea or any part of a river within the flow and ebb of the tide at ordinary spring tides:

The term "tidal lands" means such parts of the bed, shore, or banks of a tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides.

The provisions respecting the recovery of penalties contained in the said Railways Clauses Consolidation Acts respectively (e), as the case may require, shall be incorporated with this part of this act.

Alteration of Engineering Works.

Power to alter engineering works.

4. Notwithstanding anything in the said Railways Clauses Consolidation Acts respectively contained, the company, in the construction of the railway, may deviate from the line or level of any arch, tunnel, or viaduct, described on the deposited plans or sections

(b) Ante, p. 20.

(c) Ante, p. 73.

(d) 8 & 9 Vict. c. 20, ss. 2, 3, ante, p. 73.

(e) Ibid. s. 140 et seq., ante, p. 98.

so as the deviation be made within the limits of deviation shown on those plans, and subject to the limitations contained in sections eleven, twelve, and fifteen of those acts respectively, and so as the nature of the work described be not altered, and may also substitute any engineering work not shown on the deposited plans or sections for an arch, tunnel or viaduct as shown thereon: provided that every such substitution be authorized by a certificate of the Board of Trade; and the Board of Trade may grant such certificate in case it appears to them, on due inquiry, that the company has acted in the matter with good faith, and that the owners, lessees and occupiers of lands in which the substitution is intended to be made consent thereto, and also that the safety and convenience of the public will not be diminished thereby.

Provided that nothing in the present section shall affect any power given to the company or to the Board of Trade by section eleven, twelve, fourteen, or fifteen of the last-mentioned acts respectively.

Level Crossings.

5. Where the company is authorized by the special act to carry the railway across a turnpike road or public carriage road on a level, it shall not be lawful for the company in shunting trains to pass any train over the level crossing, or at any time to allow any train, engine, carriage or truck to stand across the same. Trains not to be shunted over level crossings.

6. For the greater convenience and security of the public, the company shall erect and permanently maintain a lodge at the point where the railway crosses on the level the turnpike road or public carriage road: and the company shall be subject to and shall abide by all such regulations with regard to the crossing thereof on the level, or with regard to the speed at which trains may pass the level crossing, as may from time to time be made by the Board of Trade. Company to erect lodge at point of crossing.

If the company fails to erect, or to maintain, such lodge, or to appoint or keep a proper person to watch or superintend the level crossing, or to observe or abide by any such regulation as aforesaid, they shall for every such offence be liable to a penalty not exceeding twenty pounds, and also to a penalty of ten pounds for every day during which the offence continues after the penalty of twenty pounds is incurred.

7. The Board of Trade may, if it appears to them necessary for the public safety, at any time after the passing of the special act, require the company, within such time as the Board of Trade directs, and at the expense of the company, to carry the turnpike road or public carriage road either under or over the railway by means of a bridge or arch, instead of crossing the same on the level, or to execute such other works as, under the circumstances of the case, may appear to the Board of Trade best adapted for removing or diminishing the danger arising from the level crossing. Board of Trade may require bridge instead of level crossing.

Where the road is so carried either under or over the railway, it shall not be necessary for the company to erect or maintain a lodge at the point where the road is crossed, or to appoint a person to watch or superintend the crossing thereat, nor shall they be liable to any penalty for failure so to do.

8. If the Board of Trade certifies that the public safety requires that additional lands be taken by the company for the purpose of the work directed by the Board of Trade to be executed, the company may, subject to the provisions of "The Lands Clauses Consolidation Act, 1845," or "The Lands Clauses Consolidation (Scotland) Act, 1845," as the case may require, enter upon, take, and use, all or any part of the lands specified in the certificate of the Board of Trade as being necessary for the purpose of the work; and the Board of Trade before issuing the certificate shall cause at least three months' notice to be given to any person who may be entitled to claim under the last-mentioned acts, or otherwise, compensation in respect of the taking of such lands or in respect of such work. Power to company to take additional land for such work.

Junctions.

9. Where the company is authorized by the special act to make a junction between the railway and any other railway, then and in every such case all interferences with the works of the other railway, necessary or convenient for effecting the junction, shall be made under the superintendence and to the reasonable satisfaction of the engineer for the time being of the company or person to whom the other railway belongs; and in case of any difference arising as the mode of effecting the junction, the same shall be determined by a referee to be appointed by the Board of Trade, on the application of either party, at the cost of the company making the junction. Communications with other railways to be made under the direction of the engineer of those railways.

10. With respect to any lands belonging to the company or persons to whom the other railway belongs, which the company are by the special act authorized to use, enter upon, or interfere with, for the purposes of the junction, the company shall not, except by agreement, or unless otherwise provided in the special act, purchase and take the same, but the company may purchase and take, and such other railway company or person may and shall sell and grant accordingly, an easement or right of using the same for the purposes of the junction. Company to acquire only easements in land of other railway company.

11. Nothing relative to the junction in this act contained shall be deemed to authorize the company for the purposes of the junction to take or enter upon any lands belonging to the company or person to whom the other railway belongs, or to alter or interfere with any railway, or any of the works thereof, further or otherwise than is necessary for making Not to take lands or interfere with works of other company further than necessary.

APPENDIX.

Part I.

As to expense of
signals, watch-
men, &c.

the junction and inter-communication between the railways, as shown on the deposited plans and sections of the railway to which the special act relates, without the previous consent in writing in every instance of such other railway company or such person.

12. The company or person with whose railway the junction is made may from time to time erect such signals and conveniences incident to the junction, either on their or his own lands or on the lands of the company making the junction, and may from time to time appoint and remove such watchmen, switchmen, or other persons as may be necessary for the prevention of danger to, or interference with, the traffic at and near the junction. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of the company or person with whose railway the junction is made; and all the expenses of erecting and maintaining those signals and conveniences, and of employing those watchmen, switchmen, and other persons, and all incidental current expenses, shall, at the end of every half year, be repaid by the company making the junction, and in default thereof may be recovered from them in any court of competent jurisdiction.

Protection of Navigation.

Lights on works.

13. Where the company is authorized by the special act to construct, alter, or extend any work on, in, over, through, or across tidal lands or a tidal water, the company shall, on or near the work, during the whole time of the constructing, altering, or extending thereof, exhibit and keep burning at their own expense, every night from sunset to sunrise, such lights (if any) as the Board of Trade from time to time requires or approves; and (notwithstanding the enactments for the time being in force respecting lighthouses) shall also on or near the work, when completed, always maintain, exhibit, and keep burning, at their own expense, every night from sunset to sunrise, such lights (if any) for the guidance of ships as the Board of Trade from time to time requires or approves.

If the company fails to comply in any respect with the provisions of the present section, they shall for each night in which they so fail be liable to a penalty not exceeding twenty pounds.

Construction of
bridges.

14. Where the company is authorized or required by the special act to construct a bridge over a navigable tidal water, and the special act does not make express provision respecting the span or spans thereof, then the company shall construct the same with a span or spans of such headway and waterway, and with such opening span or spans (if any), and according to such plan, as the Board of Trade directs or approves.

User of bridges.

15. Where the company constructs a bridge with an opening span, it shall not be lawful for the company to detain any vessel, barge, or boat at the bridge for a longer time than may be necessary for admitting a carriage or engine traversing the railway and approaching the bridge to cross the bridge, and for opening the bridge to admit the vessel, barge, or boat to pass; and the company shall be subject to and shall abide by such regulations with regard to the user of the bridge as may from time to time be made by the Board of Trade.

If the company detains a vessel, barge, or boat longer than the time aforesaid, or fails in any respect to abide by any such regulation as aforesaid, they shall for every such offence be liable to a penalty not exceeding twenty pounds, without prejudice to any remedy against them for any loss or damage sustained by any person.

Access to the
shore under or
across the
railway.

16. Where the railway cuts off access between the land and a tidal water or tidal lands, then and in every such case the company shall, during the construction of the railway, and from time to time thereafter, make, and shall permanently maintain, and allow to be used by all persons, at all times, free of toll or other charge, all such footways and carriageways over, under, or across the railway, or on a level therewith, as the Board of Trade from time to time directs or approves: Provided always, as follows:

- (1.) The company shall not be obliged to make a footway or carriageway over lands for the use of an owner or occupier who has agreed to receive and has been paid compensation for the severance thereof from the tidal water or tidal lands:
- (2.) The company shall not be obliged to make or to allow to be made a footway or carriageway in such manner as would interfere with the working or using of the railway:
- (3.) The expense of the making and maintenance of a footway or carriageway required to be made after the construction of the railway shall be defrayed by the persons or body interested in the tidal water or tidal lands for whose benefit or convenience the same is required.

Where the footway or carriageway is made across the railway on the level, then the manner of the making and watching of the level crossing shall be subject to the approval of the Board of Trade; and where the level crossing is made after the construction of the railway, then all expenses attending the watching thereof shall be defrayed by the persons or body interested in the tidal water or tidal lands for whose benefit or convenience the same is required.

Prohibition of
deviation of
certain works
without consent
of Board of
Trade.

17. Where the company is authorized by the special act to construct a railway skirting a public navigable tidal river or channel, the company shall not make any deviation of the railway from the continuous centre line thereof marked on the plan deposited by them at the Board of Trade, even within the limits of deviation shown on that plan, in such manner as to diminish the navigable space, without the previous consent of the Board of Trade, or otherwise than in such manner as is expressly authorized by the Board of Trade.

If any deviation is made in contravention of the present section, the Board of Trade may abate and remove the work in the construction whereof the deviation is made, or any part thereof, and restore the site thereof to its former condition, at the expense of the company: and the amount of such expense shall be a debt due from the company to the Crown, and be recoverable accordingly with costs, or the same may be recovered, with costs, as a penalty is recoverable from the company.

18. If a work constructed by the company on, in, over, through or across tidal lands or a tidal water is abandoned, or suffered to fall into decay, the Board of Trade may abate and remove the work, or any part of it, and restore the site thereof to its former condition, at the expense of the company; and the amount of such expense shall be a debt due from the company to the crown, and be recoverable accordingly, with costs, or the same may be recovered, with costs, as a penalty is recoverable from the company.

19. If at any time the Board of Trade deems it expedient, for the purposes of the special act or of this part of this act, to order a survey and examination of a work constructed by the company on, in, over, through or across tidal lands or tidal water, or of the intended site of any such work, the company shall defray the expense of the survey and examination; and the amount thereof shall be a debt due from the company to the crown, and be recoverable accordingly, with costs, or the same may be recovered, with costs, as a penalty is recoverable from the company.

APPENDIX.

Part I.

Abatement of work abandoned or decayed.

Survey of works by Board of Trade.

PART II.

EXTENSION OF TIME.

20. Where a railway is authorized to be constructed by a special act passed either before or after the passing of this act, and the time limited by the special act for the exercise of powers of compulsory purchase of lands, or of powers for construction of the railway and works, is extended by a special act hereafter passed and incorporating this part of this act,—then and in every such case the justices, arbitrators, umpires or juries, as the case may be, who award or assess the compensation to be made by the company to the owners or occupiers of, or other persons interested in, lands taken or used for the purposes of the railway and works, or injuriously affected by the construction thereof, shall, in estimating the amount of such compensation, have regard to, and assess compensation for, the additional damage (if any) sustained by those owners, occupiers or other persons, by reason of the extension of time.

Parties aggrieved by extension of time may have compensation for additional damage.

21. The extension of time shall not affect any contract entered into or notice given by the company before the passing of the special act granting the extension, for purchasing, taking or using any lands which the company was entitled to purchase, take or use; but every such contract and notice shall be construed and take effect, and the same proceedings may be had thereunder, and all parties thereto shall be entitled to the same rights and remedies in respect thereof, at law and in equity, as if the extension had not been granted.

Existing contracts and notices to take lands not to be affected.

PART III.

WORKING AGREEMENTS(a).

22. Where two or more companies are authorized by a special act hereafter passed and incorporating this part of this act, to agree among themselves with respect to all or any of the following purposes (b); namely,—

Restrictions on agreements between companies.

The maintenance and management of the railways of the companies respectively, or any one or more of them, or any part thereof respectively, and of the works connected therewith respectively, or any of them;

The use and working of the railways or railway, or of any part thereof, and the conveyance of traffic thereon;

The fixing, collecting and apportionment of the tolls, rates, charges, receipts and revenues levied, taken or arising in respect of traffic;—

then and in every such case the authority so to agree, or the agreement when entered into, shall not in any manner affect any of the tolls, rates or charges which the companies parties thereto are from time to time respectively authorized to demand and receive from any person or from any other company; but all such persons and companies shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of the several companies parties to the agreement, on the same terms and conditions, and on payment of the same tolls, rates and charges as they would be if such authority had not been given or the agreement had not been entered into.

23. The agreement shall not, save so far as its terms and conditions are authorized by "The Railways Clauses Consolidation Act, 1845" (c), or by "The Railways Clauses Con-

Sanction of shareholders to agreements.

(a) And see ante, text, 493.

et seq., post.

(b) See also 27 & 28 Vict. c. 120, s. 3,

(c) 8 & 9 Vict. c. 20, ante, p. 73.

APPENDIX.

Part III.

solidation (Scotland) Act, 1845," as the case may require, or by any other general statute or law from time to time in force with respect to the companies parties to the agreement, have any operation unless and until it is sanctioned by such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the several companies parties thereto, present (personally or by proxy) at a general meeting of each company specially convened for the purpose (in manner hereinafter mentioned), as is prescribed in the special act, and if no proportion is prescribed, then by three-fifths of such votes.

Every such meeting shall be convened by circular addressed to each such shareholder and stockholder, and served in the manner prescribed by "The Companies Clauses Consolidation Act, 1845" (c), or "The Companies Clauses Consolidation (Scotland) Act, 1845," as the case may require, with respect to notices requiring to be served by the company upon the shareholders, and also by advertisement inserted once at least in each of two consecutive weeks in some newspaper published or circulating in the county prescribed in the special act, and if no county is prescribed, then in the county in which the head office of the company is situate, the last of such advertisements to be published not less than seven days before the meeting.

Public notice of intention to enter into such agreement.

24. Before the companies enter into the agreement notice of their intention to do so shall be given by them or one of them, in a form to be approved by the Board of Trade, inserted once at least in each of three successive weeks in some newspaper published or circulating in the county prescribed in the special act, and if no county is prescribed, then in the county or one of the counties in which each railway to the maintenance, management, use or working whereof the proposed agreement relates, or some portion of that railway, is situate; and the notice shall set forth within what time and in what manner any company or person aggrieved by the proposed agreement, and desiring to object thereto, may bring the objection before the Board of Trade.

Approval of Board of Trade.

25. The agreement shall not have any operation until it is approved by the Board of Trade, and the Board of Trade shall not approve the agreement without being satisfied of its having received such sanction of meetings of the respective companies as aforesaid.

Joint committee for purposes of agreements.

26. The companies parties to the agreement may, in accordance therewith and for the purposes thereof, appoint a joint committee, composed of such number of the directors of each company as the companies think proper, and from time to time may vary and renew the joint committee as occasion requires, and may regulate the proceedings of the joint committee, and may delegate to the joint committee all such of the powers of the companies as the companies think necessary for carrying into effect the purposes of the agreement; and the joint committee shall have and may exercise the powers so from time to time delegated to them in like manner as the same powers might be had and exercised by the companies respectively or their respective directors.

Agreements between companies may be modified by Board of Trade.

27. At the expiration of the first or any subsequent period of ten years after the making of the agreement, the Board of Trade may, if they are of opinion that the interests of the public are prejudicially affected thereby, cause the same to be revised; and the Board of Trade may require the companies parties thereto to publish such notices of any intended revision of the agreement as the Board of Trade may direct; and the Board of Trade may modify the agreement in such manner as may seem expedient for the protection of the interests of the public, and may declare the modification to be part of the agreement, and the same shall be read and take effect accordingly.

Working agreements between a company and an individual.

28. Where a company is authorized by a special act hereafter passed, and incorporating this part of this act, to agree with a person being the proprietor of a railway with respect to all or any of the purposes specified in this part of this act, then and in every such case the provisions of this part of this act shall apply, *mutatis mutandis*, to the company in relation to such authority and to the agreement entered into by virtue thereof.

Alteration of agreement.

29. For the purposes of this part of this act, any alteration of an agreement by the parties thereto shall be deemed an agreement.

PART IV.

STEAM VESSELS.

Provision for securing equality of treatment.

30. Where a railway company incorporated either before or after the passing of this act is authorized by a special act hereafter passed and incorporating this part of this act, to build, or buy or hire, and to use, maintain and work, or to enter into arrangements for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels,—then and in every such case tolls shall be at all times charged to all persons equally, and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made

in favour of or against any person using the steam vessels in consequence of his having travelled or being about to travel on the whole or any part of the company's railway, or not having travelled or not being about to travel on any part thereof; or in favour of or against any person using the railway in consequence of his having used or being about to use or his not having used or not being about to use the steam vessels; and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway.

31. The provisions of "The Railway and Canal Traffic Act, 1854" (*f*), so far as the same are applicable, shall extend to the steam vessels, and to the traffic carried on thereby.

32. The company may from time to time make byelaws in relation to passengers, animals and goods conveyed in or upon the steam vessels, and as to the embarkation and disembarkation thereof respectively, and may enforce the observance of the same by penalties, in the same manner as they may with respect to passengers, animals and goods conveyed upon their railways; such byelaws to be sanctioned and authenticated in the same manner as is required by any special or other act with respect to byelaws relating to the company's railway, and being published by being painted on boards, or printed on paper and pasted on boards, and hung up or affixed and continued on some conspicuous part of every steam vessel and landing-place of the company; and such byelaws, and all penalties in respect of the breach thereof, shall be enforced and recovered in the same manner as is provided with respect to byelaws relating to the company's railway, and to penalties in respect of the breach thereof.

33. All tolls and charges for the steam vessels due and payable to the company on any account whatsoever, and all costs, damages and expenses by the special act directed to be paid in respect of the steam vessels, may be levied by distress; and in England or Ireland any justice, and in Scotland the sheriff, may, on application by or on behalf of the company, issue his warrant accordingly.

The justice or sheriff who issues the warrant of distress may order that the costs of the proceedings for the recovery of the toll or sum shall be paid by the person liable to pay the toll or sum, and the costs shall be ascertained by the justice or sheriff, and shall be included in the warrant of distress for the recovery of the toll or sum.

34. Any number of names and sums may be included in any warrant of distress or notice obtained or given by the company for any of the purposes of this part of this act, or of the provisions of the special act with respect to the steam vessels, and may be stated either in the body of the warrant or notice, or in a schedule thereto.

35. In every seventh year after the passing of the special act, reckoned from the first day of January next after its passing, the Board of Trade, if they are of opinion that the interests of the public are prejudicially affected by the exercise of the powers of the company relative to steam vessels, may give to the company notice in writing thereof, and of the reasons on which that opinion is founded; and if the company does not before the beginning of the then next session of Parliament make provision to the satisfaction of the Board of Trade for protection of the interests of the public, or if the injury done to the interests of the public is in the opinion of the Board of Trade incapable of being remedied by the company, then the Board of Trade, at the beginning of the session of Parliament then next following, shall report to both houses of Parliament such their opinion, and the reasons on which that opinion is founded; and at the expiration of twelve calendar months after the presentation to the houses of Parliament of that report, the powers of the company relative to steam vessels, or such of them as are specified in the report, shall, unless Parliament in the meantime otherwise provides, cease to be exercised.

PART V.

AMALGAMATION (*g*).

36. This part of this act shall apply where two or more railway companies, respectively incorporated either before or after the passing of this act, are amalgamated by a special act hereafter passed and incorporating this part of this act.

37. For the purposes of this part of this act, companies shall be deemed amalgamated by a special act, in either of the following cases:

- (1.) Where by the special act two or more companies are dissolved, and the members thereof respectively are united into and incorporated as a new company:
- (2.) Where by the special act a company or companies is or are dissolved, and the undertaking or undertakings of the dissolved company or companies is or are transferred to another existing company, with or without a change in the name of that company:

And in this part of this act, such special act is referred to as the amalgamating act; the company incorporated or continued by or under the amalgamating act is referred to as the

APPENDIX.

Part IV.

Application of Railway and Canal Traffic Act.

Company empowered to make bye-laws for regulating steam vessels.

Recovery of money by distress.

Several names in one warrant.

Provision for cesser of powers as to steam vessels, on report from Board of Trade.

Application of Part V.

Definition of cases of amalgamation.

(*f*) 17 & 18 Vict. c. 31, ante, p. 134.

(*g*) And see ante, text, 492.

APPENDIX.

Part V.

Undertakings of dissolved companies vested in amalgamated company.

Acts relating to dissolved companies to apply to amalgamated company.

Saving debts and claims of dissolved companies.

Saving conveyances, contracts, &c.

Causes and rights of action reserved.

Actions not to abate.

Saving submissions and awards relating to dissolved companies.

Unexecuted works of dissolved companies may be completed.

amalgamated company; and the time prescribed in the amalgamating act for the amalgamation taking effect, and if no time is prescribed, then the time of the passing of the amalgamating act, is referred to as the time of amalgamation.

38. In every case of amalgamation, the undertaking, railways, harbours, navigations, ferries, wharfs, canals, works, real and personal property, powers, authorities, privileges, exemptions, rights of action and suit, and all other the rights and interests of the dissolved company, shall, subject to the contracts, obligations, debts and liabilities of that company, become at the time of amalgamation, and by virtue of the amalgamating act, vested in the amalgamated company, and may and shall be held, used, exercised and enjoyed by the amalgamated company in the same manner and to the same extent as the same respectively at the time of amalgamation are, or if the amalgamating act were not passed might be, held, used, exercised and enjoyed by the dissolved company.

39. The special acts relating to or affecting the dissolved company or their undertaking in force at the passing of the amalgamating act, shall, except so far as they are thereby expressed to be varied or repealed, remain in full force; and all rights and powers thereby conferred on and vested in the dissolved company in relation to their undertaking may be enjoyed and exercised by the amalgamated company in relation to the dissolved undertaking; and all matters to be done, continued or completed, or which but for the amalgamation would, might or could be done, continued or completed, by the dissolved company, or their directors, officers or servants, under or by virtue of those acts, shall or may be done, continued or completed by the amalgamated company, and their directors, officers and servants, as the case may be; and every special act, so far as it relates to or affects the dissolved company or their undertaking, shall be read and construed as if the name of the amalgamated company had been used therein in relation to that undertaking instead of the name of the dissolved company.

40. Except as may be otherwise provided in the special act, all debts and money due from or to the dissolved company, or any persons on their behalf, shall be payable and paid by or to the amalgamated company; and all tolls, rates, duties and money due or payable by virtue of any act relating to the dissolved company from or to that company shall be due and payable from or to the amalgamated company, and shall be recoverable from or by the amalgamated company by the same ways and means, and subject to the same conditions, as the same would or might have been recoverable from or by the dissolved company if the amalgamating act had not been passed.

41. All deeds, conveyances, grants, assignments, leases, purchases, sales, mortgages, bonds, covenants, agreements, contracts and securities which before the amalgamation have been executed, made or entered into by, with, to or in relation to the dissolved company, or the directors thereof, and which are in force at the time of amalgamation, and all obligations and liabilities which before the amalgamation have been incurred by or to, or which but for the amalgamation might or would have arisen in relation to, the dissolved company or the directors thereof, shall be as valid and of as full force and effect in favour of, against or in relation to the amalgamated company as if the same had been executed, made or entered into by, with or to, or in relation to or had been incurred by or to or had arisen in relation to, the amalgamated company by name.

42. All causes and rights of action or suit accrued before the time of amalgamation, and then in any manner enforceable by, for or against the dissolved company shall be and remain as good, valid and effectual for or against the amalgamated company as they would or might have been for or against the dissolved company affected thereby, if the amalgamating act had not been passed.

43. Nothing in the amalgamating act or in this part of this act shall cause the abatement, discontinuance or determination of or in anywise prejudicially affect any action, suit or other proceeding at law or in equity commenced by or against the dissolved company, either solely or jointly with any other company or with any person, before the time of amalgamation, and then pending; but the same may be continued, prosecuted or enforced by or against the amalgamated company, either solely or, as the case may require, jointly with such other company or with such person; and all persons committing offences against any of the provisions of any special act relating to the dissolved company before the amalgamation may be prosecuted, and all penalties incurred by reason of such offences may be sued for and recovered, in like manner in all respects as if the amalgamating act had not been passed,—the amalgamated company being in respect of all such matters considered as identical with the dissolved company.

44. No submission to arbitration of any matter in dispute between the dissolved company and any other company or any person, under which any reference is pending and incomplete at the time of amalgamation, and no award theretofore made and then remaining in force, shall be revoked or prejudicially affected by anything in the amalgamating act or in this part of this act contained; but every such submission and award shall be as valid and effectual for or against the amalgamated company as it would have been for or against the dissolved company.

45. All works which the dissolved company is at the time of amalgamation authorized or bound to execute and complete, and which are not then executed or completed, may or shall (as the case may require) be executed or completed by the amalgamated company, and

for that purpose the amalgamated company shall have and be subject to all the powers, rights and conditions which were conferred or imposed upon the dissolved company, and which but for the passing of the amalgamating act might have been exercised by or enforced against the dissolved company.

46. Where the dissolved company has under any special act entered into any contract for the purchase of or taken or used any lands, which at the time of amalgamation have not been effectually conveyed to the dissolved company, or the purchase money in respect of which has not been duly paid by the dissolved company,—then and in every such case the contract, if in force at the time of amalgamation, shall thereafter be completed by, and such lands shall be conveyed to, the amalgamated company, or as the amalgamated company directs, and the purchase money shall be paid and applied pursuant to the special acts relating to the dissolved company; and those acts shall, in relation to the completion of the contract and the purchase and conveyance of the lands, and the payment and application of the purchase money in respect thereof, be read and construed as if the amalgamated company were the company named in the acts and contract.

47. Where any money has, before the time of amalgamation, been paid by the dissolved company, or is thereafter paid by the amalgamated company under any special act relating to the dissolved company, into the Bank of England, or into one of the incorporated or chartered banks in Scotland, or into the Bank of Ireland, or to any trustee or trustees, on account of the purchase of any lands or any interest therein, or for any compensation or satisfaction, or on any other account, such money, or the stocks, funds or securities in or upon which the same then is or thereafter may be invested by order of any court or otherwise, and the interest, dividends, and annual produce thereof, shall be applied and disposed of pursuant to such special act; and that and every other act shall, in relation to such money, stocks, funds or securities, or the interest, dividends or annual produce thereof, be read and construed as if the amalgamated company were the company therein named with reference to the same money, stocks, funds, securities, interest, dividends or annual produce.

48. All officers and persons who, at the time of amalgamation, have in their possession or under their control any books, documents, papers or effects belonging to the dissolved company, or to which the dissolved company would but for such dissolution have been entitled, shall be liable to account for and deliver up the same to the amalgamated company, or to such persons as the amalgamated company may appoint to receive the same, in the same manner, and subject to the same consequences on refusal or neglect as if such officers and persons had been appointed by and become possessed of such books, documents, papers or effects for the amalgamated company.

49. All clerks, officers and servants who at the time of amalgamation are in the employment of the dissolved company shall thereupon become clerks, officers or servants, as the case may be, of the amalgamated company, with the same rights, and subject to the same obligations and incidents in respect of such employment as they would have had or been subject to as the clerks, officers or servants of the dissolved company, and shall so continue unless and until they respectively are duly removed from such employment by the amalgamated company, or until the terms of their employment are duly altered by the amalgamated company.

50. All books and documents which would have been evidence in respect of any matter for or against the dissolved company shall be admitted as evidence in respect of the same or the like matter for or against the amalgamated company.

51. All resolutions of any general meeting or board of directors of the dissolved company, or of any duly constituted and authorized committee thereof, so far as the same are applicable and remain in force, shall, notwithstanding the dissolution, continue to be operative, and shall apply to the amalgamated company, and to the directors, officers and servants of the amalgamated company, until duly revoked or altered by the amalgamated company or under their authority.

52. All calls made by the dissolved company, and not paid at the time of amalgamation, shall be payable to and may be enforced by the amalgamated company, as if such calls had been made by the amalgamated company.

53. All registers of shares, stock, mortgages and bonds of the dissolved company, and all registers of transfers thereof respectively, and all shareholders' and stockholders' address books, and all certificates of shares or stock of and in the dissolved company, which are valid and subsisting at the time of amalgamation, shall continue to be valid and subsisting, and shall have the same operation and effect as before the dissolution, unless and until new or altered registers, books and certificates respectively are substituted in their stead; and all transfers, sales or dispositions of stock or shares made before the dissolution and not then completed shall have the same operation and effect as if made after the dissolution.

54. All the byelaws, rules and regulations of the dissolved company relating to the management, use or control of their undertaking shall, notwithstanding the dissolution, continue to be in force and applicable to and in respect of the undertaking, and shall and may be enforced by and available to the amalgamated company in their own name, as well for the recovery of penalties as for all other purposes, as if the same respectively had

APPENDIX.
Part V.

Contracts for land entered into by dissolved companies to be executed.

Application of money paid into bank or to trustees.

Officers of dissolved companies to be accountable for books, &c.

Officers of dissolved companies to be officers of amalgamated company.

Books, &c. to be evidence.

Resolutions of dissolved companies to remain in force.

Payment of calls.

Registers, books and certificates relating to dissolved companies to subsist until replaced.

Bye-laws to remain in force.

APPENDIX.

Part V.

General saving of rights and claims.

been originally made by the amalgamated company, until the expiration of twelve months after the time of amalgamation, or until other byelaws, rules and regulations are duly made by the amalgamated company in their stead, whichever first happens.

55. Notwithstanding the dissolution of the dissolved company, and the amalgamation, everything before the time of amalgamation done, suffered and confirmed respectively, under or by virtue of any special act relating to the dissolved company, shall be as valid as if the amalgamating act had not been passed; and the dissolution and amalgamation, and the amalgamating act, and this part of this act, respectively, shall accordingly be subject and without prejudice to everything so done, suffered and confirmed respectively, and to all rights, liabilities, claims and demands, present or future, which if the dissolution and amalgamation had not taken place and the amalgamating act had not been passed, would be incident to or consequent on anything so done, suffered and confirmed respectively; and with respect to all things so done, suffered and confirmed respectively, and to all such rights, liabilities, claims and demands, the amalgamated company shall to all intents represent the dissolved company; and the generality of this present provision shall not be deemed to be restricted by any other of the provisions of this part of this act, or by any provision of the amalgamating act that does not expressly refer to this present provision, and expressly restrict the operation thereof.

26 & 27 VICT. CAP. 118.

An Act for consolidating in One Act certain Provisions frequently inserted in Acts relating to the Constitution and Management of Companies incorporated for carrying on Undertakings of a Public Nature. [28th July, 1863.]

8 & 9 Vict.
cc. 16 and 18.

Whereas "The Companies Clauses Consolidation Act, 1845" (h), and "The Companies Clauses Consolidation (Scotland) Act, 1845," respectively, were passed in order to comprise in one general act such provisions relating to the constitution and management of joint stock companies incorporated for the purpose of carrying on undertakings of a public nature in England or Ireland, or in Scotland, respectively, as were at the times of the passing of those acts usually introduced into acts of parliament relating to such companies: And whereas sundry provisions of the like nature, but not comprised in the said general acts respectively, are now frequently introduced into acts of parliaments relating to such companies, and it is expedient to comprise such last mentioned provisions also in one general act, such act to be applicable to England or Ireland, or to Scotland, as the case may require, and that as well for the purpose of avoiding the necessity of repeating such provisions in the acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves: Be it therefore enacted, by (&c., &c.), as follows:—

Short title.

Division of act into parts.

1. This act may be cited as "The Companies Clauses Act, 1863."
2. This act shall be deemed to be divided into four parts, as follows:—
 - Part I. relating to cancellation and surrender of shares (Sect. 3);
 - Part II. relating to additional capital (Sect. 12);
 - Part III. relating to debenture stock (Sect. 22);
 - Part IV. relating to change of name (Sect. 36).

PART I.

CANCELLATION AND SURRENDER OF SHARES.

Application of Part I.

Power to company to cancel forfeited shares.

3. This part of this act shall apply to every company incorporated either before or after the passing of this act, which obtains a special act incorporating this part of this act.

4. Where any share of the capital of the company is after the passing of this act declared forfeited under and in pursuance of the provisions with respect to the forfeiture of shares for non-payment of calls contained in "The Companies Clauses Consolidation Act, 1845" (i), and "The Companies Clauses Consolidation (Scotland) Act, 1845," respectively, and the forfeiture is confirmed by a meeting in accordance with the same provisions respectively, and notice of the forfeiture has been given,—then and in every such case, if the directors of the company are unable to sell the share for a sum equal to the arrears of calls and interest and expenses due in respect thereof, the company at any general meeting held not less than two months after such notice is given may, in case payment of the arrears of calls, interest and expenses due in respect thereof is not made by the registered holder of the share before the meeting is held, resolve that the share instead of being sold shall be cancelled, and the share shall thereupon be cancelled accordingly.

(h) Ante, p. 24.

(i) Ante, p. 28.

5. A declaration in writing made by some credible person, in England or Ireland before a justice, and in Scotland before any sheriff or justice, stating that a sum of money sufficient to pay the arrears of calls, interest and expenses due in respect of the share, could not at the time of the cancellation of the share be obtained for the same upon the stock exchange prescribed in the special act, and if no stock exchange is prescribed then upon the stock exchange, as to England, of the city of London, and as to Scotland of the city of Edinburgh, and as to Ireland of the city of Dublin, shall be sufficient evidence of the fact so declared.

6. Where it is so resolved that any share shall be cancelled, the holder thereof shall from and after the passing of the resolution be precluded from all right and interest therein and in respect thereof; but the cancellation shall not affect the liability of the last registered holder of the share to pay to the company all arrears of calls, interest and expenses due in respect of the share at the time of the cancellation, or the power of the company to enforce payment thereof by action or otherwise.

7. Provided always, that if the company enforces the payment of the arrears of calls, interest and expenses under the last preceding provision, the value of the share at the time of the cancellation thereof shall be deducted from the amount so then due; provided also, that if payment of all arrears of calls, interest and expenses is made before such meeting as aforesaid is held, the share shall revert to the person to whom it belonged at the time of forfeiture, and shall be re-entered on the company's register accordingly.

8. Where any share is declared forfeited, or where any sum payable on any share remains unpaid, the company, with the consent in writing of the registered holder of the share, and with the sanction of a general meeting, may resolve that the share shall be cancelled, and immediately thereupon the share shall be cancelled, and all liabilities and rights with respect to the share shall thereupon be absolutely extinguished.

9. The company may from time to time accept, on such terms as they think fit, surrenders of any shares which have not been fully paid up.

10. The company shall not pay or refund to any shareholder any sum of money for or in respect of the cancellation or surrender of any share.

11. The company may from time to time, in lieu of any shares that have been cancelled or surrendered, issue new shares of such amounts as will allow the same to be conveniently apportioned or disposed of according to the resolution of any ordinary or extraordinary meeting of the company, and may from time to time fix the amounts and times of payment of the calls on any such new shares, and dispose thereof on such terms and conditions as may be so resolved upon: Provided, that the aggregate nominal amount of the new shares shall not exceed the aggregate nominal amount of the shares in lieu of which the new shares are issued, after deducting the amount actually paid up in respect of the shares cancelled or surrendered.

PART II.

ADDITIONAL CAPITAL.

New Ordinary Shares or Stock.

12. Where any company, incorporated either before or after the passing of this act for the purpose of carrying on any undertaking, is authorized by any special act hereafter passed, and incorporating this part of this act, to raise any additional sum or sums by the issue of new ordinary shares, or by the issue of new ordinary stock, or (at the option of the company) by either of those modes,—then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a meeting of the company specially convened for the purpose, as is prescribed in the special act, and if no proportion is prescribed, then of three-fifths of such votes, may, for the purpose of raising the additional sum or sums, from time to time create and issue (according as the authority given by the special act extends to shares only, or to stock only, or to both) such new ordinary shares, of such nominal amount, and subject to the payment of calls of such amounts and at such times, as the company thinks fit, or such new ordinary stock as the company thinks fit.

Preference Shares or Stock.

13. Where any such company is authorized by any special act hereafter passed and incorporating this part of this act to raise any additional sum or sums by the issue of new preference shares, or by the issue of new preference stock, or (at the option of the company) by either of those modes,—then and in every such case the company, with the like sanction as aforesaid, may for the purpose of raising such additional sum or sums from time to time create and issue (according as the authority given by the special act extends to shares only, or to stock only, or to both) such new shares or new stock, either ordinary or preference, and either of one class and with like privileges, or of several classes and with different privileges, and of the same or different amounts, and respectively with any fixed, fluctuating, contingent, preferential, perpetual, terminable, deferred or other dividend

APPENDIX.

Part I.

Evidence for cancellation of forfeited shares.

Payment of calls in arrear notwithstanding cancellation.

Value of forfeited shares to be deducted from amount due in respect thereof.

Company may cancel forfeited shares with consent of holders.

As to surrender of shares.

No money to be paid for cancellation or surrender.

Power to create shares in lieu of cancelled, forfeited, &c. shares.

Regulations as to creation and issue of ordinary shares or new ordinary stock.

Regulations as to creation and issue of new preference shares or new preference stock.

APPENDIX.

Part II.

Saving rights of preference shareholders.

Preference shares to be entitled to dividends only out of the profits of each year.

Terms, &c. to be stated on certificates.

Unissued shares and stock may be cancelled.

If ordinary stock or shares at a premium new shares or stock to be offered to existing ordinary shareholders.

Offer to be made by letter.

New shares or stock to vest on acceptance.

As to disposal of new shares or stock to others.

Power to enlarge time for accepting new shares or stock.

General power to dispose of unappropriated new shares and stock.

Regulations as to creation and issue of debenture stock.

or interest not exceeding the rate prescribed in the special act, and if no rate is prescribed then not exceeding the rate of five pounds per centum per annum, and subject (as to any such new shares) to the payment of calls of such amounts and at such times, as the company from time to time thinks fit:

Provided always, that any preference assigned to any shares or stock so issued under the special act shall not affect any guarantee, or any preference or priority in the payment of dividend or interest, on any shares or stock, that may have been granted by the company under or confirmed by any previous act, or that may be otherwise lawfully subsisting.

14. The preference shares or preference stock so issued shall be entitled to the preferential dividend or interest assigned thereto, out of the profits of each year, in priority to the ordinary shares and ordinary stock of the company; but if in any year ending on the day prescribed in the special act, and if no day is prescribed, then on the thirty-first day of December, there are not profits available for the payment of the full amount of preferential dividend or interest for that year, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company.

15. The terms and conditions to which any preference share or preference stock is subject shall be clearly stated on the certificate of that preference share or portion of preference stock.

General Provisions as to new Shares or Stock.

16. If, after having created new shares or new stock, the company determines not to issue the whole of the new shares or new stock, they may cancel the unissued new shares or new stock.

17. If, at the time of the issue of new shares or new stock, the ordinary shares or ordinary stock of the company are or is at a premium, then, unless the company before the issue of the new shares or new stock otherwise determines, the new shares or new stock then issued shall be of such amount as will conveniently allow the same to be apportioned among the then holders of the ordinary stock and ordinary shares, respectively, in proportion, as nearly as conveniently may be, to the ordinary shares and ordinary stock held by them respectively, and shall be offered to them at par in that proportion: Provided, that it shall not be obligatory on the company so to apportion or offer any new shares or new stock unless the amount of every new share or portion of new stock to be so offered would if so apportioned be at least the sum prescribed in the special act, and if no sum is prescribed then at least ten pounds.

18. The offer of new shares or new stock shall be made by letter under the hand of the treasurer or secretary of the company given to every such shareholder or stockholder as aforesaid, or sent by post addressed to him according to his address in the shareholders or stockholders address book, or left for him at his usual or then last known place of abode in England, Scotland or Ireland (as the case may require); and every such offer made by letter sent by post shall be considered as made on the day on which the letter in due course of delivery ought to be delivered at the place to which it is addressed.

19. The new shares or portions of new stock so offered shall vest in and belong to the shareholders or stockholders who accept the same or their nominees.

20. If any shareholder or stockholder fails for the time prescribed in the special act, and if no time is prescribed then for one month, after the offer to him of new shares or new stock, to signify his acceptance of the same or any part thereof, then and in every such case at the expiration of that period he shall be deemed to have declined the offer of such new shares or new stock or such part thereof as aforesaid, and the same may be disposed of by the company as hereinafter provided:

Provided, that where a shareholder or stockholder, from absence abroad or other cause satisfactory to the directors of the company, omits to signify within the time aforesaid his acceptance of the new shares or new stock offered to him, the directors, if they think proper, may permit him to accept the same, notwithstanding that such time has elapsed.

21. Subject to the foregoing provisions, the company may from time to time dispose of new shares and new stock at such times, to such persons, on such terms and conditions, and in such manner as the directors think advantageous to the company, but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof.

PART III.

DEBENTURE STOCK.

22. Where any company, incorporated either before or after the passing of this act for the purpose of carrying on any undertaking, is authorized by any special act hereafter passed, and incorporating this part of this act, to create and issue debenture stock,—then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a meeting of the company specially convened

APPENDIX.
Part III.

for the purpose, as is prescribed in the special act, and if no proportion is prescribed, then of three-fifths of such votes, may from time to time raise all or any part of the money which for the time being they have raised, or are authorized to raise, on mortgage or bond, by the creation and issue, at such times, in such amounts and manner, on such terms, subject to such conditions, and with such rights and privileges, as the company thinks fit, of stock to be called debenture stock, instead of and to the same amount as the whole or any part of the money which may for the time being be owing by the company on mortgage or bond, or which they may from time to time have power to raise on mortgage or bond, and may attach to the stock so created such fixed and perpetual preferential interest not exceeding the rate prescribed in the special act, and if no rate is prescribed, then not exceeding the rate of four pounds per centum per annum, payable half-yearly or otherwise, and commencing at once, or at any future time or times, when and as the debenture stock is issued, or otherwise, as the company thinks fit.

23. Debenture stock, with the interest thereon, shall be a charge upon the undertaking of the company, prior to all shares or stock of the company, and shall be transmissible and transferable in the same manner and according to the same regulations and provisions as other stock of the company, and shall in all other respects have the incidents of personal estate.

Debenture stock to be a prior charge.

24. The interest on debenture stock shall have priority of payment over all dividends or interest on any shares or stock of the company, whether ordinary or preference or guaranteed, and shall rank next to the interest payable on the mortgages or bonds for the time being of the company legally granted before the creation of such stock; but the holders of debenture stock shall not, as among themselves, be entitled to any preference or priority.

Interest on debenture stock to be a primary charge.

25. If within thirty days after the interest on any such debenture stock is payable the same is not paid, any one or more of the holders of the debenture stock holding, individually or collectively, the sum in nominal amount thereof prescribed in the special act, and if no sum is prescribed, then a sum equal to one tenth of the aggregate amount which the company is for the time being authorized to raise by mortgage, by bond, and by debenture stock, or the sum of ten thousand pounds, whichever of the two last-mentioned sums is the smaller sum, may (without prejudice to the right to sue in any court of competent jurisdiction for the interest in arrear) require the appointment in England or Ireland of a receiver, and in Scotland of a judicial factor.

Payment of arrears may be enforced by appointment of receiver or judicial factor.

26. Every such application for a receiver shall be made to two justices, and every such application for a judicial factor shall be made to the court of session; and on any such application the justices or court (as the case may be), by order in writing, after hearing the parties, may appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of the interest, until all the arrears of interest then due on the debenture stock, with all costs, including the charges of receiving the tolls or sums, are fully paid; and upon such appointment being made all such tolls or sums shall be paid to and received by the person so appointed; and all money so received shall be deemed so much money received by or to the use of the several persons interested in the same, according to their several priorities.

Mode of appointing receiver or judicial factor.

The receiver or judicial factor shall distribute rateably and without priority, among all the proprietors of debenture stock to whom interest is in arrear, the money which so comes to his hands, after applying a sufficient part thereof in or towards satisfaction of the interest on the mortgages and bonds of the company.

As soon as the full amount of interest and costs has been so received, the power of the receiver or judicial factor shall cease, and he shall be bound to account to the company for his acts or intromissions or the sums received by him, and to pay over to the company any balance that may be in his hands.

27. If the interest on debenture stock is in arrear for thirty days next after any of the respective days whereon the same is payable, the holder for the time being thereof may (without prejudice to his power to apply for the appointment of a receiver or judicial factor) recover the arrears with costs by action or suit against the company in any court of competent jurisdiction.

Arrears may be recovered by action or suit.

28. The company shall cause entries of the debenture stock from time to time created to be made in a register to be kept for that purpose, wherein they shall enter the names and addresses of the several persons and corporations from time to time entitled to the debenture stock, with the respective amounts of the stock to which they are respectively entitled; and the register shall be accessible for inspection and perusal at all reasonable times to every mortgagee, bondholder, debenture stock holder, shareholder, and stockholder of the company, without the payment of any fee or charge.

Debenture stock to be registered.

29. The company shall deliver to every holder of debenture stock a certificate stating the amount of debenture stock held by him; and all regulations or provisions for the time being applicable to certificates of shares in the capital of the company shall apply, mutatis mutandis, to certificates of debenture stock.

Company to deliver certificate to holders of debenture stock.

30. Nothing herein or in the special act authorizing the issue of debenture stock contained shall in any way affect any mortgage or bond at any time legally granted by the company before the creation of such stock, or any power of the company to raise

Mortgages not affected by this act.

APPENDIX.

Part IV.

Holders of debenture stock not to vote.

Application of money raised.

Separate accounts of debenture stock.

Borrowing powers extinguished to extent of debenture stock.

Application of Part III. to mortgage preference stock, and funded debt.

money on mortgage or bond, but the holders of all such mortgages and bonds shall, during the continuance thereof respectively, be entitled to the same priorities, rights, and privileges in all respects as they would have been entitled to if the special act authorizing the issue of debenture stock had not been passed.

31. Debenture stock shall not entitle the holders thereof to be present or vote at any meeting of the company, or confer any qualification, but shall, in all respects not otherwise by or under this act or the special act provided for, be considered as entitling the holders to the rights and powers of mortgagees of the undertaking other than the right to require repayment of the principal money paid up in respect of the debenture stock.

32. Money raised by debenture stock shall be applied exclusively either in paying off money due by the company on mortgage or bond, or else for the purposes to which the same money would be applicable if it were raised on mortgage or bond instead of on debenture stock.

33. Separate and distinct accounts shall be kept by the company, showing how much money has been received for or on account of debenture stock, and how much money borrowed or owing on mortgage or bond, or which they have power so to borrow, has been paid off by debenture stock, or raised thereby, instead of being borrowed on mortgage or bond.

34. The powers of borrowing and re-borrowing by the company shall, to the extent of the money raised by the issue of debenture stock, be extinguished.

35. The provisions of this part of this act shall be deemed to apply to mortgage preference stock, and to funded debt, as the case may require, in all respects as if mortgage preference stock or funded debt were mentioned throughout this part of this act wherever debenture stock is mentioned therein.

PART IV.

CHANGE OF NAME.

Continuance of powers.

36. Where by any special act hereafter passed and incorporating this part of this act the name of any company incorporated either before or after the passing of this act for the purpose of carrying on any undertaking is changed,—then and in every such case from the passing of the special act the company by their new name shall have and may exercise the powers then vested in the company by their original name; and all acts relating to the company by their original name shall be read and interpreted as if throughout those acts, wherever the original name of the company or any reference to the company by their original name occurs, the new name of the company or a reference to the company by their new name were substituted.

Actions, &c. not to abate.

37. No action, suit, bill, process, writ, indictment, information, or other proceeding, whether civil or criminal, which at or immediately before the passing of the special act is commenced and is then pending,—either at the suit or instance of the company, by their original name, against any other corporation or any person, or at the suit or instance of any other corporation or any person against the company, by their original name,—shall abate, determine, or be otherwise impeached or affected for or by reason of the change of the name of the company; nor shall any notice, tender, requisition, warrant, summons, pleading, civil or criminal writ or other process, record, deed, contract, agreement, writing, or instrument then or thereafter to be made, issued, written, or commenced, be deemed to be vacated, discharged, invalidated, prejudiced, or affected by reason of the company or their undertaking being therein respectively called by the original name of the company or undertaking; and it shall not be necessary in any bill, suit, indictment, information, proceeding, notice, tender, requisition, warrant, summons, pleading, civil or criminal writ, or other process, or in any record, deed, contract, agreement, writing, or other instrument or matter, to aver that the company had been called or known for any period by the original name of the company, or that their undertaking had been called or known within that period by the original name of the undertaking, and that by the special act effecting the change the names of the company and their undertaking were changed, and that after the passing of that special act the company had been called or known by their new name and their undertaking by its new name; but it shall be deemed true, lawful, and sufficient therein to aver the style and describe the company by their new name, and their undertaking by its new name, in the same manner as if the company had been originally incorporated, called, or known by their new name, and as if their undertaking had been originally called or known by its new name.

General saving of rights.

38. Notwithstanding the change of the name of the company, everything before the passing of the special act effecting the change done, suffered, or confirmed under or by virtue of any other act shall be as valid as if the special act effecting the change were not passed; and the change of name and last-mentioned special act respectively shall accordingly be subject and without prejudice to everything so done, suffered, or confirmed before the passing of the last-mentioned special act, and to all rights, liabilities, claims and demands, then present or future, which, if the change of name had not happened and such last-mentioned special act had not been passed, would be incident to or consequent on anything so done, suffered or confirmed.

39. Notwithstanding the change of the name of the company, all deeds, instruments purchases, sales, securities and contracts before the passing of the special act effecting the change made under any other act, or with reference to the purposes thereof, shall be as effectual to all intents in favour of, against and with respect to the company as if the name of the company had remained unchanged.

APPENDIX.

Part IV.
Contracts, &c.
preserved.

27 & 28 VICT. CAP. 71.

An Act for amending and extending the Railways (Ireland) Act, 1851, and the Railways (Ireland) Act, 1860. [25th July, 1864.]

Whereas it is expedient that "The Railways Act (Ireland), 1851" (a), and "The Railways Act (Ireland), 1860" (b), should be amended, and the provisions thereof extended, as hereinafter mentioned: be it therefore enacted, by (&c. &c.), as follows:

1. In all cases where the amount of money which the arbitrator appointed under the provisions of the said acts, or either of them, shall have awarded to be paid by the company to any person in respect of any estate or interest in lands shall exceed the sum of five hundred pounds it shall be lawful for the company, if dissatisfied with such award, upon giving to such person within ten days next after the date of such award notice in writing of their intention to appeal therefrom, to have a traverse entered by the company in the crown book in respect of such award, at the same time and in like manner in all respects as are provided by the aforesaid acts with respect to traverses taken by persons dissatisfied with any award, and the like proceedings shall be taken with respect to a traverse so taken by the company, and the verdict of the jury upon such traverse shall have the like effect as in the case of a traverse taken by a person so dissatisfied: provided always, that in all cases where a traverse shall be so taken by the company, if the verdict of the jury shall be for a sum less than that awarded by the arbitrator, the company shall nevertheless pay to the other party to such traverse such sum not exceeding twenty pounds for the costs of such traverse as the judge before whom the same is tried shall direct; and in case the verdict of the jury shall be for a sum equal to or exceeding the award of the arbitrator, then and in that case the company shall pay to the other party the costs of the traverse, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of an issue from the Court of Queen's Bench.

The company, if dissatisfied with award, in cases exceeding 500*l.*, may traverse.

2. In all cases of traverse taken upon an award of the arbitrator, the company or person appellant shall be entitled to have the same tried by a special jury upon giving notice in writing to the respondent in such traverse of their or his intention that the same shall be so tried ten days previous to the assizes or term respectively (as the case may be), and the respondent in such traverse shall be so entitled upon giving the like notice six days before the said assizes or term: provided that any judge of any of the superior courts sitting in chamber or at nisi prius may at any time order that such traverse shall be tried by a special jury upon such terms as he may think fit.

Power to have special jury.

3. Where notice has been given to try by special jury either party may, six days before the first day of the assizes or of the term, as the case may be, give notice to the sheriff that such action is to be tried by a special jury; and in case no such notice has been given, or the notice has not been given in sufficient time, no special jury need be summoned to attend, and such traverse shall be tried before a common jury unless otherwise ordered by the judge before whom the same shall be tried.

Notice to be given to the sheriff of special jury.

4. Either party to such traverse shall be entitled to have the premises viewed by the jury, and for that purpose it shall be sufficient to obtain an order of any such judge as aforesaid directing a view to be had, and thereupon all such proceedings shall be had as are directed by "The Common Law Procedure Amendment Act (Ireland), 1853," section 116, with respect to view juries.

Either party to such traverse entitled to have the premises viewed by the jury.

5. In case either party shall be dissatisfied at the trial of such traverse with the ruling of the judge upon any matter of law, he shall be entitled to appeal from such ruling in the manner herein contained.

Either party may appeal from ruling of judge.

6. The party so objecting shall deliver to the judge at the time of such trial a note in writing, stating such objection and the grounds thereof, and shall and may prepare a case, stating the facts and matters appearing in evidence so far as may be necessary, and the ruling of the judge, and the objections to such ruling, and such case may be accompanied by an appendix containing copies of the material documents; and all proceedings shall be taken with respect to the settlement of such case, and within the same period, as are taken in Ireland with respect to bills of exceptions to the direction of a judge at nisi prius.

The party objecting shall deliver to the judge a note in writing, stating objection and grounds thereof.

7. Such special case and the appendix thereto, when settled and signed by the said judge, shall be filed in such one of the superior courts as the said judge shall direct, and such court shall proceed to adjudicate on the same in like manner as upon a special case

Special case, when settled and signed by the judge, to be filed.

(a) Ante, p. 128.

(b) Ante, p. 146.

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Court may direct an issue or other inquiry.

Judgment upon special case to be equivalent to judgment of court.

Costs of appeal to be paid by company where appellants.

As to compensation in respect of lands temporarily occupied.

Taxation of costs.

Construction of term "company."

If company do not take possession within a fortnight of final award, value of crop to be added.

Within five years after the opening of a railway, the company may be called upon to make certain accommodation works, and, if so, the matter shall be referred to an arbitrator.

Arbitrator shall have all the

stated under the said Common Law Procedure Act, and the adjudication of such court shall be final.

8. It shall be lawful for such court, upon the hearing of such special case, to direct any issue to be tried, or any valuation or other inquiry to be made, or the said case to be amended in any way, or other act to be done, which such court may deem proper, in order finally to adjudicate upon and determine the rights of the parties.

9. The judgment or order of the said court upon such special case shall be equivalent to a judgment of the said court in a personal action between the parties.

10. In all cases where the company shall take any proceedings by way of appeal as aforesaid the costs thereof shall be ordered to be paid by them; but in cases where the company shall be respondent in such appeal the costs of such proceedings shall follow the event, and be included in the ultimate judgment of the court of appeal.

11. The amount of the purchase money or other compensation payable by the company in respect of lands temporarily occupied by them during the construction of the works, in case the parties shall differ about the same, shall be determined in manner following: The person claiming such purchase money or compensation shall deliver to the arbitrator a short statement in writing, setting forth the nature and amount of such claim, and shall also and at the same time deliver to the company a copy of the same; and the like proceedings in all respects shall be had with respect to such claim as are by the aforesaid acts or by this act directed to be taken with respect to a claim for compensation for lands taken or injuriously affected by the execution of the works: and the arbitrator shall have full jurisdiction to entertain such claim, and determine the amount payable in respect thereof, although the lands so temporarily occupied may not be contained in the maps and plans deposited with him; and the said arbitrator may include the amount so ascertained by him as last aforesaid in his general award, or may make a special award in relation to the same in case it shall be necessary or convenient so to do, such special award to be made in the like manner, and to be subject to the like provisions in all respects as such general award; and all the enactments expressly, or by reference or incorporation, contained in the said acts or in this act with respect to purchase money or compensation ascertained by the award of the arbitrator in respect of lands permanently taken by the company shall be applicable to the purchase money or compensation ascertained as aforesaid by the arbitrator in respect of lands so temporarily occupied as aforesaid.

12. In all cases where costs of conveyances shall be payable by the company such costs shall be taxed by one of the taxing masters of the Court of Chancery in Ireland upon the requisition of such company; and all the provisions of any act of Parliament, and all rules and regulations of the courts of law and equity in Ireland relating to the taxation of costs shall be deemed applicable to such costs so payable by the company in like manner in all respects as if the said company were directly chargeable therewith.

13. In the construction of "The Railways Act (Ireland), 1851," and of "The Railways Act (Ireland), 1860," and of this act, the expression "company" shall include any parties, whether company, undertakers, commissioners, drainage board, corporation, or private persons, empowered to execute any work or undertaking, and to take or use any lands, mills or other hereditaments compulsorily under the provisions of any general or special act of Parliament, already or hereafter incorporating the said recited acts and this act or any of such acts.

14. When any railway company shall not take possession of or pay for any land within one fortnight from the lodgement of the final award of the arbitrator with the clerk of the peace, the said company shall, before taking possession of the same, in addition to the sum awarded by the arbitrator, pay to the occupant of any land to be taken the value of any crop existing upon or in the land at the time of taking possession of same, and which has not been included in said award, such value to be determined by any three justices of the petty sessions district in which such lands may be situated, one to be named by the railway company, one by the occupant of such land, and the third by the two justices so named.

15. Every railway company in Ireland shall cause proper fences to be made and maintained for separating the land taken for the use of the railway from the adjoining lands not taken, and shall also provide and maintain proper drains or other passages either over or under or by the sides of the railway to convey water from or to the lands lying near or affected by the railway, in the same manner and to the same extent as it was conveyed from or to the said lands before the making of the railway, or as near thereto as the case may be; and in case any owner or occupier of such land shall complain of the want of or insufficiency of any such fences, drains or passages, it shall be lawful for such owner or occupier, within five years after the completion of the works of any railway and the opening of the railway for public use, to present a memorial to the commissioners of public works in Ireland stating the ground of his complaint, and thereupon the commissioners shall inquire into the matter of such complaint, and, if they shall so think fit, the said commissioners shall appoint an arbitrator to hear and determine the matter of the said complaint.

16. The arbitrator so appointed shall have and exercise all the powers vested in any arbitrator appointed under "The Railways (Ireland) Acts, 1851 and 1860," and shall

proceed to investigate the said complaint at some convenient place to be named by the said commissioners of public works, after giving ten days' notice of the time and place of meeting to the memorialists and to the railway company, and his award may be traversed in the same manner as any award made by an arbitrator appointed under "The Railways (Ireland) Acts, 1851 and 1860," and if not traversed shall be final; and the costs of the said arbitration and of the said arbitrator shall be paid in the same manner as the costs of an arbitration or arbitrator under "The Railways (Ireland) Acts, 1851 and 1860."

17. The company shall make all such fences, drains and passages as by the award of the said arbitrator they shall be directed to make; but no company shall be required to make the same in such a manner as will prevent or obstruct the working or using of the railway, nor shall they be required to make any fence, drain or passage in respect of which the owner and occupier, or any former owner and occupier, shall have agreed to receive and shall have been paid compensation in lieu of the making of the works themselves.

18. "The Railways Act (Ireland), 1851," and "The Railways Act (Ireland), 1860," and this act, shall be construed together as one act; and this act, together with the said acts, shall be held to be incorporated with those acts in any act already or hereafter incorporating those acts or any of them.

19. This act may be cited as "The Railways Act (Ireland), 1864."

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powers of an arbitrator appointed under 14 & 15 Vict. c. 70, and 23 & 24 Vict. c. 97.

The company shall obey the award of the arbitrator, except in certain cases.

This act, and 14 & 15 Vict. c. 70, and 23 & 24 Vict. c. 97, to be read together.

Short title.

27 & 28 VICT. CAP. 95.

An Act to amend the Act Ninth and Tenth Victoria, Chapter Ninety-three, for compensating the Families of Persons killed by Accident. [29th July, 1864.]

Whereas by an act passed in the session of Parliament holden in the ninth and tenth years of her Majesty's reign, intituled "An Act for compensating the Families of Persons killed by Accident," it is amongst other things provided, that every such action as therein mentioned shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused as therein mentioned, and shall be brought by and in the name of the executor or administrator of the person deceased: And whereas it may happen by reason of the inability or default of any person to obtain probate of the will or letters of administration of the personal estate and effects of the person deceased, or by reason of the unwillingness or neglect of the executor or administrator of the person deceased to bring such action as aforesaid, that the person or persons entitled to the benefit of the said act may be deprived thereof; and it is expedient to amend and extend the said act as hereinafter mentioned: Be it therefore enacted, by (&c. &c.), as follows:

1. If and so often as it shall happen at any time or times hereafter in any of the cases intended and provided for by the said act that there shall be no executor or administrator of the person deceased, or that there being such executor or administrator no such action as in the said act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought by and in the name of his or her executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure, as nearly as may be, as if it were brought by and in the name of such executor or administrator.

2. And whereas by the second section of the said act it is provided that the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided between the before-mentioned parties in such shares as the jury shall by their verdict direct: Be it enacted and declared, That it shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said act for his wrongful act, neglect or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

3. This act and the said act shall be read together as one act.

9 & 10 Vict. c. 93, ante, p. 107.

Where no action brought within six months by executor of person killed, then action may be brought by persons beneficially interested in result of action.

Money paid into court may be paid in one sum, without regard to its division into shares.

If not accepted, defendant entitled to verdict on the issue.

This and recited act to be read as one.

27 & 28 VICT. CAP. 114.

The Improvement of Land Act, 1864. [29th July, 1864.]

Whereas an act was passed in the twelfth and thirteenth years of her present Majesty, intituled "An Act to promote the advance of private Money for Drainage of Lands in Great Britain and Ireland," and several companies have been incorporated by act of Parliament, with special powers for promoting the improvement of land in Great Britain

12 & 13 Vict. c. 100,

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repealed.

*Commissioners,
Landowners, &c.*Interpretation of
"the commis-
sioners."1 & 2 Will. 4,
c. 33.

5 & 6 Vict. c. 89.

Provisions of
9 & 10 Vict.
c. 101, &c. to
extend and be
applicable to pro-
ceedings of com-
missioners.Assistant com-
missioners may
take declarations
and examine
witnesses.Punishment of
persons giving
false evidence.As to service of
notices on com-
missioners.As to the services
of notices on
other persons.Interpretation of
"landowner."

1 & 2 Vict. c. 109.

and Ireland by drainage and otherwise; and it is desirable to amend and consolidate the law relating to the improvement of land by owners of limited interests, and to enable such owners to charge their lands with money subscribed for the construction of railways and navigable canals which will permanently increase the value of such lands: Be it enacted, by (&c. &c.), as follows:

1. [Repeals 12 & 13 Vict. c. 100.]

And with regard to the commissioners for the execution of this act, and other general matters, be it enacted as follows:

2. By "the commissioners" shall herein be meant, as regards lands in Great Britain, the inclosure commissioners for England and Wales, and as regards lands in Ireland, the commissioners of public works in Ireland under an act of the first and second years of his late Majesty king William the fourth, intituled "An Act for the Extension and Promotion of Public Works in Ireland," and an act of the fifth and sixth years of the reign of her present Majesty, intituled "An Act to promote Drainage of Lands, and Improvement of Navigation and Water Power in connexion with Drainage in Ireland," and the several acts amending the same respectively.

3. All the provisions of the act of the ninth and tenth years of the reign of her present Majesty, intituled "An Act to authorize the Advance of Public Money to a limited Amount to promote the Improvement of Land in Great Britain and Ireland by Works of Drainage," and of any and every other act for the time being in force relating to any of the aforesaid commissioners, so far as the same may concern or be auxiliary to the proceedings or inquiries of the commissioners under the authority of such acts or any of them, or the authentication of instruments, shall, except as in this act otherwise provided, extend and be applicable to their proceedings and inquiries, and the authentication of instruments, under this act.

4. Every assistant commissioner or inspector acting in any matter, inquiry or proceeding by the authority and in the execution of this act may receive declarations and statements, and examine upon declaration all such persons as may voluntarily attend before him in such matter, inquiry or proceeding.

5. If any person shall wilfully give false evidence in any matter, inquiry or proceeding under the provisions of this act, or shall make or subscribe a false statement or declaration for the purposes of this act, such person shall, in England or Ireland, be deemed guilty of a misdemeanor, and in Scotland of a crime and offence, and shall be punished accordingly.

6. Any notice requiring to be served upon the commissioners may be served by the same being left at or transmitted through the post, directed to their office in London.

7. In all cases in which it shall be necessary under the provisions of this act to serve any notice upon any other person, it shall be sufficient to send such notice in a registered post letter, directed to such person at his then or last known place of residence or of business, unless the letter containing such notice shall be returned from the post office as undelivered; and if such person shall not have any place of residence or of business within Great Britain or Ireland, or if the place of business or of residence of such person cannot with due diligence be ascertained, then such notice may be served upon such other person as his representative, or be given in such other manner as the commissioners shall in such case direct or approve.

8. The word "landowner" shall mean herein, as to lands in England, the person who shall be in the actual possession or receipt of the rents or profits of any land, whether of freehold, copyhold, customary or other tenure, except where such person shall be a tenant for life or lives holding under a lease for life or lives not renewable, or shall be a tenant for years holding under a lease or an agreement for a lease for a term of years not renewable, whereof less than twenty-five years shall be unexpired at the time of making any application to the commissioners, without regard to the real amount of the interest of any person so excepted; and in the case where the person in the actual possession or receipt of the rents or profits of any land shall fall within the above exceptions, then the person who for the time being shall be in the actual receipt of the rent payable by the person so excepted, unless he shall also fall within the above exceptions, shall, jointly with the person who shall be liable to the payment thereof, be deemed for the purposes of this act to be the owner of such lands; and as to lands in Scotland, the word "landowner" shall denote and include every fiar, liferenter or heir of entail who shall be in the actual possession of the land, or in receipt of the rents payable on the tacks, leases or tenancies of the tenants in the actual possession thereof; and as to lands in Ireland, the word "landowner" shall mean such person as under the act passed in the first and second years of the reign of her present Majesty, intituled "An Act to abolish Compositions for Tithes in Ireland, and to substitute Rentcharges in lieu thereof," shall have the first estate of inheritance, or other estate or interest equivalent to a perpetual estate or interest therein, and also any tenant in dower or by the curtesy, or any person having under the limitations of any settlement by deed, will, act of Parliament or otherwise any estate for life, or other particular estate thereby created or limited out of or in any estate of inheritance, or by, out of or in any such estate or interest as by or under the last-mentioned act is to be deemed equivalent to a perpetual estate or interest; and as to lands in any part of the United

Kingdom, the word "landowner" shall include a corporation and also such persons as are empowered by the twenty-third (a) section hereof.

9. By "the improvement of land" shall herein be meant all or any of the following matters:

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Interpretation of
"improvement of
land."

6. The making of permanent farm roads and permanent tramways and railways and navigable canals for all purposes connected with the improvement of the estate:

11. The construction or improvement of jetties or landing places on the sea coast or on the banks of navigable rivers or lakes, for the transport of cattle, sheep and other agricultural stock and produce, and of lime, manure and other articles and things for agricultural purposes; provided that the commissioners shall be satisfied that such works will add to the permanent value of the lands to be charged to an extent equal to the expense thereof:

12. The execution of all such works as in the judgment of the commissioners may be necessary for carrying into effect any matter hereinbefore mentioned, or for deriving the full benefit thereof.

10. The word "person" shall in this act include companies and all other corporations.

Interpretation of
"person."

And with regard to the Proceedings preliminary to the Sanction of any Improvements, be it enacted as follows:

*Proceedings
preliminary to
Sanction of
Improvements.*

11. When any landowner shall be desirous of borrowing or advancing money under this act for the improvement of his land, he shall make an application to the commissioners to sanction the proposed improvements in such manner and form and stating such particulars as the commissioners shall from time to time direct; and until the proposed improvements shall have been sanctioned by the commissioners in manner hereinafter mentioned, the application may be withdrawn or altered or consolidated with any other application, at the pleasure of the applicant, but without prejudice to his liability as hereinafter mentioned for the expenses incurred by the commissioners or their officers in consequence of his application.

Application to
commissioners
to sanction im-
provements.

12. Any two or more landowners may, with the consent of the commissioners, join in an application to them to sanction the improvement of the lands of such landowners respectively, but the sum to be charged in pursuance of any such joint application shall be apportioned so that a separate and distinct sum may become charged on the land of each landowner.

Joint application
by several land-
owners.

13. The commissioners may from time to time frame and circulate, as they shall see occasion, forms indicating the particulars of the information to be furnished to them by landowners for the purposes of this act, and such other forms as the commissioners may deem expedient for facilitating any proceedings under this act.

Commissioners
may issue forms;

14. The commissioners may require security to be given to them by the landowner, by bond, deposit or otherwise, in such form as they may think fit, for the payment to them of the expenses which they or their officers shall incur in respect of the investigation on any application, and, if they shall issue such provisional or other sanctioning order as hereinafter mentioned, of the expenses which they or their officers shall incur in inspecting and ascertaining the due execution of the works; but unless the commissioners shall issue such absolute order as hereinafter mentioned, such payment shall not be a charge on the land to which such application relates, but shall be a debt due by the person making such application to the commissioners, and shall be recoverable by them as in the nature of a crown debt.

require security
for expenses;

15. If the commissioners shall think fit to entertain the application so made to them, they may cause the land to be inspected and examined by an assistant commissioner or an engineer or surveyor, who shall have regard to and examine the proposals and statements contained in such application, and shall report his opinion thereon, and who shall also report whether in his judgment the proposed improvements will effect a permanent increase of the yearly value of the land exceeding the yearly amount proposed to be charged thereon in respect of the improvements applied for; and the commissioners may by themselves or any assistant commissioner, engineer or surveyor, make such other inquiries in relation to any such application as they shall think fit: Provided that the above requisition as to increased annual value shall not apply to any outlay proposed to be made upon or in respect of planting only.

cause application
to be inves-
tigated;

16. The commissioners shall have power to require such alterations as they shall think expedient to be made in the improvements proposed, or in the proposed mode of executing them.

and require pro-
posed improve-
ments to be
modified.

17. Before the commissioners shall sanction any improvements, notice shall be given of the application as well by advertisement inserted in two successive weeks in some newspaper published in the county in which the land to be improved lies, or in case there shall be no such newspaper published in such county then in some county adjoining thereto, as by a notice in writing given, where such lands are situate in England or

Advertisements
and notices pre-
liminary to
sanction.

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Ireland, to every person entitled to any estate in such land, or any part thereof, in reversion or remainder, up to and inclusive of the person entitled to the first vested estate of inheritance therein, and to every person entitled to any mortgage upon such land or any part thereof who by reasonable inquiry shall be known to be so interested, and given, where such lands are situate in Scotland, to the nearest heir or heirs of entail, not exceeding three, and to the holders of every heritable security on such lands appearing upon the records; and in such advertisements and notices respectively shall be stated the maximum amount which it is proposed to charge in respect of the improvements, and the greatest and least terms over which it is proposed that the rentcharge should be spread; and the commissioners shall not sanction the improvements until one month shall have elapsed from the publication of the second of such advertisements and the service of such notices (if any) respectively, of which publication, and of the service of all necessary notices as aforesaid, the landowner shall, if required by the commissioners, satisfy them by one or more statutory declarations made by him or on his behalf.

Power of dissent by persons interested, and protection of landowner's infant children.

18. In case any person having any estate in or charge or security on the land to be improved shall within the month named in the last preceding section signify in writing to the commissioners his dissent from such application, stating therein the nature of his estate in or charge or security on such land, the commissioners shall certify such dissent to the landowner by whom the application was made, and shall not make any provisional or other order sanctioning the improvements unless or until such dissent be withdrawn, or an order be made by the High Court of Chancery in England or Ireland respectively, or by the Court of Session in Scotland, in manner hereinafter provided, authorizing the commissioners to sanction the same; nor shall they make any provisional or other order sanctioning the improvement of any land in the case of which the landowner, or the husband of the landowner, shall be the father of the person or persons entitled either at law or in equity to any estate in such land, or any part thereof, in reversion or remainder, up to and inclusive of the person entitled to the first vested estate of inheritance, and such person or persons, or any of them, shall be an infant or infants, or a minor or minors, unless or until such an order as hereinbefore mentioned shall be made by such court as aforesaid.

The same in case of navigable rivers and canals.

19. If the commissioners shall consider that any proposed improvement would interfere with any navigable river or canal respectively vested in or under the management or control of any commissioners, trustees, conservators, undertakers, company or other body or individuals, or the banks or other works or conveniences thereof, or would occasion the flow or discharge into such river or canal of any drainage or other matter, the landowner shall give notice of the application in writing, together with a plan and section of the proposed improvement, to such commissioners, trustees, conservators, undertakers, company or other body or individuals; and in case they shall, within one month after the receipt of such notice, signify in writing to the commissioners their dissent from such application, and state the nature of their interest in or authority over such river or canal, the commissioners shall certify such dissent to the landowner by whom the application was made, and shall not sanction the improvement unless or until such dissent be withdrawn, or an order be made by the High Court of Chancery in England or Ireland respectively, or by the Court of Session in Scotland, in manner hereinafter provided, authorizing the commissioners to sanction the improvement.

Consents necessary in case of church lands.

20. When the land to which the application relates, or any part of such land, is held in right of any church, chapel, or other ecclesiastical benefice, the commissioners shall not sanction any improvement of such land, or of so much thereof as is so held, unless and until the patron of the benefice, and in England and Ireland the bishop of the diocese, and in Scotland the presbytery of the bounds, shall signify to the commissioners, by writing under their hands, their respective consents to such application.

In case of dissent, or when landowner's infant children are to be protected, Court of Chancery or Session may authorize commissioners to proceed.

21. If and when any dissent from any such application to the commissioners for their sanction of proposed improvements shall have been notified in writing to the commissioners, either by a party interested in the lands proposed to be improved (not being lands held in right of any church, chapel or other ecclesiastical benefice), or by the commissioners, trustees, company or other body or individuals interested in any river or canal which would or might be interfered with as hereinbefore mentioned, or if the landowner or the husband of the landowner shall be the father of the person or persons entitled either at law or in equity to any estate in the land to be improved or any part thereof, in reversion or remainder, up to and inclusive of the person entitled to the first vested estate of inheritance, and such person or persons, or any of them, shall be an infant or infants, or a minor or minors, the landowner desiring such improvements may apply to the High Court of Chancery in England or Ireland where such lands are situate in England or Ireland respectively, or to the Court of Session where such lands are situate in Scotland, for an order of such court authorizing the commissioners to entertain and proceed upon the application for such proposed improvements, notwithstanding such dissent or circumstance; and such application shall be made, as to lands in England, to the master of the rolls or any one of the vice-chancellors sitting at chambers, by summons, calling on the party dissenting to show cause why such order should not be made; as to lands in Ireland, to the master of the rolls, by summary petition or otherwise, as he shall by any general

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order direct; and as to lands in Scotland, to either division of the Court of Session in time of session, or to the lord ordinary sitting on bills in time of vacation, by summary petition; and the court or single judge, as the case may be, to whom such application shall be made, shall hear and determine such application, and for that purpose shall have power to make or direct to be made all such inquiries, and receive and entertain all such statements and evidence, on oath or by affidavit, as such court or judge may consider necessary or desirable, or as may be produced before them or him; and if upon a consideration of all the circumstances such court or judge shall be of opinion that the commissioners should entertain and proceed upon such application, an order shall be made authorizing and requiring them to proceed thereon, and to deal with the same according to the provisions of this act authorizing them in that behalf, notwithstanding such dissent or circumstance as aforesaid: Provided that if at any time after notification of such dissent, and before any such order shall have been applied for and made as aforesaid, such dissent shall be withdrawn by a like notification in writing, it shall not be necessary to make or proceed with such application or to obtain such order.

22. Where any party dissenting shall be out of the jurisdiction of the court, it shall be lawful for the court or judge to order service to be made in such manner as such court or judge may think fit, and upon proof to the satisfaction of such court or judge that such party has had actual notice within a reasonable time of such intended application, it shall be lawful for such court or judge thereupon to hear and determine such application.

Service of notice under preceding clause.

23. The costs of and incidental to every application under the twenty-first and twenty-second sections, and the mode in which such costs shall be settled or taxed, shall be in the discretion of the court or judge who shall hear such application, and if such court or judge shall so direct, the said costs shall be deemed to be part of the expenses of and incidental to the application for the proposed improvements.

And costs may be given by the court.

24. All husbands, guardians, tutors, committees, curators, feoffees, trustees, judicial factors, executors and administrators shall respectively have the same rights and powers of making applications and signifying dissents, and taking other proceedings under this act, as their respective wives, infants, minors, lunatics, idiots, and furious or fatuous persons would have had if free from disability, or as such feoffees, trustees, judicial factors, executors or administrators respectively would have had if the estates, charges or interests of which they shall be such feoffees, trustees or judicial factors, or which shall be vested in them as such executors or administrators, had been vested in them in their own right; but no guardian, tutor, committee, curator, feoffee, trustee, judicial factor, executor or administrator shall be in anywise compelled or obliged to signify a dissent from any application under this act, or be in anywise responsible for the consequences of such application, or of any charge made in pursuance thereof.

Representation of persons under disability for applications and dissents under preceding clauses.

And with regard to the Sanction of any Improvements, and the Rights arising thereunder, be it enacted as follows:

25. If the commissioners shall find that the proposed improvements or any part thereof, whether with or without any alterations by them required or sanctioned, would effect a permanent increase of the yearly value of the lands proposed to be improved, or of any part thereof, exceeding the yearly amount proposed to be charged thereon, they shall sanction such improvements or such part thereof as they shall think expedient, if under the preceding sections it shall be lawful for them so to do, by an order under their hands and seal; and they shall by the same order fix the rate of interest to be allowed on the cost of the sanctioned improvements, having regard to the market value of money at the time, but such interest shall never exceed five per cent. per annum.

Sanction of Improvements, and Rights thereunder.

Commissioners' order sanctioning improvements.

26. The commissioners shall from time to time prepare forms of orders for sanctioning improvements, and shall also, whenever required by the landowner so to do, frame and entitle their said orders under this act in such manner that they may also be and operate as provisional, sanctioning or other corresponding orders under the respective acts applying to any company with which he may have contracted relating to the loan or improvements in question: Provided that every order operating under this act to sanction any improvements shall name the landowner to whom it is issued; shall express the greatest sum to be charged in addition to any costs, charges and expenses under the fiftieth section hereof, and the rate of interest and term of years for the repayment thereof, the former not exceeding five per centum per annum, and the latter not exceeding twenty-five years; shall specify the lands on which such repayment is to be charged; and shall either express or refer to some contract or other document expressing the general scheme of the improvements to be executed.

Forms of orders sanctioning improvements to be prepared by commissioners; what they must contain.

27. Every order operating under this act alone to sanction any improvement may be in the form set forth in schedule (A.) hereto, and shall be called a provisional order, and shall, subject to the following section hereof, create in favour of the landowner named therein the title to an absolute charge on the completion of the sanctioned improvements, which title such landowner may assign, either absolutely or by way of security, to any person; and such assignment may be made by endorsement on the provisional order.

They may be called provisional orders, and may be assigned to parties agreeing to execute improvements.

28. In case of the death of any landowner, or the determination of his interest, between the date of the provisional order and the completion of the improvements sanctioned thereby, the right to complete such improvements, and to assign the title to an absolute

Provision for death of landowner pending

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—
completion of
improvements.

charge, shall pass to the succeeding landowner; but if the succeeding landowner shall not within three calendar months after his succession proceed with the works, so as to complete the same in conformity with the provisional order, the preceding landowner, or in case of his decease his executors or administrators, may complete such improvements, and shall become entitled to have the absolute charge executed to him or them. If the succeeding landowner shall complete the improvements there shall be distinct absolute charges executed to such landowner, and the preceding landowner or his personal representatives, for the outlay made by the preceding and succeeding landowners respectively, and in case of difference the commissioners shall determine the proportions; provided that the succeeding landowner may, with the sanction of the inclosure commissioners, and after notice to the parties to whom notice was originally given, or such of them as may be living, and such other persons, if any, as the commissioners may direct, terminate the proceedings under the provisional order, on payment of the outlay and expenses made thereunder, and indemnifying the person to whom the title to the absolute charge may have been assigned. Notwithstanding the foregoing provisions, if the title to an absolute charge shall have been assigned by the preceding landowner, the assignee may complete the improvements if he shall proceed therewith within one calendar month from the time the preceding landowner ceased to be such landowner.

Provisional
orders may be
modified.

29. The commissioners may from time to time, on application to be made by the landowner, and after such inquiry as they shall think fit, sanction any modifications or alterations either of the scheme of the improvements or of any other matter expressed or referred to in the provisional order: Provided that no such modification or alteration shall increase the sum to be charged in respect of the improvements, or extend or curtail the term of repayment, beyond the greatest amount which it was proposed so to charge, or the greatest or least term over which it was proposed that the rentcharge should be spread, as respectively stated in the advertisement and notices hereinbefore required: Provided also, that every such modification or alteration shall require the consent of every party who, by having contracted for the execution of the improvements, or by having taken an assignment of the title to an absolute charge or otherwise, may be interested therein; and the modifying order shall be in such form as the commissioners shall from time to time appoint, and shall be construed together with the original order as one order with respect to all rights arising thereunder after the date of the modifying order.

Execution of
Improvements.

—
Detailed specifications to be
delivered in
advance;

And with regard to the Execution of any Improvements, be it enacted as follows:—

30. Before the commencement of any improvements sanctioned in manner aforesaid the landowner shall deliver to the commissioners a detailed specification thereof, and in the case of buildings, and also in any other case where the same shall be required by the commissioners, a detailed plan or drawing: Provided that when it is not intended to complete the improvements within one year from the date of the provisional or other sanctioning order, the specification and plan or drawing first delivered may comprise so much only as it is intended to complete within one year from the said date, so, however, that for the works of each successive year such specification and plan or drawing as aforesaid be always delivered in advance.

and approved
before execution
of works.

31. The specifications and plans or drawings aforesaid shall be examined, and, if necessary, the spot visited by an assistant commissioner, or an engineer or surveyor, who shall report whether in his judgment the improvements as proposed to be effected will be effected in a substantial and durable manner, and, in the case of farm buildings, whether the same or the improvements thereof or additions thereto, will be suitable to the locality; and no improvement shall be commenced or proceeded with until the specifications and plans or drawings aforesaid shall have been approved by the commissioners; but nothing herein contained shall render necessary the re-delivery, re-examination or re-approval of any detailed specifications, plans or drawings which may have been delivered in connexion with the application for the commissioners' sanction to the general scheme of the improvements, and may have been approved in connexion with that sanction.

Adjoining lands,
or easements over
them, may be
sold for purpose
of improvements,
and conveniences
over adjoining
lands for the
execution of im-
provements con-
tracted for.

32. All persons interested in any lands adjoining or near to the land improved or proposed to be improved, and being, as to lands in England or Ireland by the provisions of "The Lands Clauses Consolidation Act, 1845" (a), and as to lands in Scotland by the provisions of "The Lands Clauses Consolidation (Scotland) Act, 1845," enabled to sell and dispose of such lands so adjoining or near or any estate or interest therein, may, for the purpose of any improvements authorized by this act, sell and convey or grant to the landowner whose land has been or is proposed to be improved such lands so adjoining or near, or any part thereof, or any easement, authority or right in, through, over or affecting the same, and any such land, easement, authority or right so sold and conveyed or granted shall thereupon become appurtenant to or pertinent of the lands improved or proposed so to be, and with reference to the improvements whereof the same was purchased, and shall be held upon and subject to the same uses, trusts, charges and incidents; and all such persons as aforesaid may also make any agreement with the landowner, or with any person or company that shall have contracted for the actual execution of the improvements, or their respective agents, with reference to entering on, cutting through or into, or prejudicially

(a) Ante, p. 45.

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affecting such lands so adjoining or near; and every such sale, conveyance, grant and agreement shall be valid and effectual accordingly, and the price or consideration shall be settled by two surveyors or a surveyor to be appointed by them in manner provided by the ninth section of "The Lands Clauses Consolidation Act, 1845," or, as the case may be, by the ninth section of "The Lands Clauses Consolidation (Scotland) Act, 1845," and shall be deposited as directed by the same respective sections, and thenceforth become subject to the provisions of the same respective acts.

33. Whenever the commissioners shall think that it may be expedient, in order to obtain or improve an outfall for draining or warping any lands under this act, or otherwise with a view to the improvement of any lands under this act, to enter and execute any works upon any land adjoining or near to the land proposed to be improved, where, by reason of the objection or disability of any owner, lessee or occupier of such land, such works could not be otherwise executed, proceedings may be taken, if the said lands shall lie in England, either under the provisions of the act of the tenth and eleventh years of the reign of her present majesty, chapter thirty-eight, intituled "An Act to facilitate the Drainage of Lands in England and Wales," or under those of the third part of "The Land Drainage Act, 1861," and, if in Scotland, under the provisions of the act of the tenth and eleventh years of the reign of her present Majesty, chapter one hundred and thirteen, intituled "An Act to facilitate the Drainage of Lands in Scotland," but as though in such act the inclosure commissioners for England and Wales had everywhere been named in place of the sheriff; and if such proceedings shall have been taken before the sanction of the improvements in question by the commissioners under this act, the commissioners may, by their order sanctioning such improvements, declare the works in respect of which they shall have been taken to be expedient, and such works shall then be deemed to have been authorized by the commissioners or by the sheriff, as the case may be, and the provisions of the said respective acts shall apply to them accordingly.

Works necessary to be made on adjoining lands for execution of improvements may be made under certain acts.

34. Every provisional or modifying order shall be a full authority to the landowner or successive landowners and their representatives in the respective cases hereinbefore defined, and to all persons employed by or under contract with him or them respectively, to enter upon the lands to be improved, and any adjoining or neighbouring lands acquired or authorized to be entered under either of the two last preceding sections, and to execute in and on the same, without impeachment of waste by any remainderman or reversioner, all the improvements sanctioned by the same order according to the specifications and plans or drawings approved by the commissioners, and to do, execute, and use all such acts, works, and conveniences as may be proper for making, maintaining and using such improvements; and for the purpose of effecting any improvement under this or the recited acts it shall be lawful to get and work freestone, limestone, clay, sand and any other mineral or substance out of the land to be improved or charged, and to make tramroads and other ways, and to burn and make bricks, tiles and other things to be used in effecting such improvements, and also for the same purpose to cut down and use any timber or trees not planted or serving for shelter or ornament.

Provisional order to protect from impeachment of waste, and to authorize getting materials from land, &c.

35. [Saving rights of the crown.]

36. [Saving rights of the commissioners of her Majesty's works, &c.]

37. [Saving rights of duchy of Cornwall.]

38. [Saving rights of duchy of Lancaster.]

39. [Saving rights of the Admiralty and of the Board of Trade.]

40. [Plans to be deposited with Admiralty before commencing works below high-water mark.]

41. If at any time or times it shall be deemed expedient by the Admiralty or the Board of Trade, as the case may require, to order a local survey and examination of any embankment or work proposed to be constructed under the powers of this act in, over or affecting any tidal or navigable water or river, or of the intended site thereof, the landowner shall defray the costs of every such local survey and examination, and the amount thereof shall be a debt due to her Majesty from the landowner, and if not paid upon demand may be recovered as a debt due to the crown, with the costs of suit, or may be recovered, with costs, as a penalty is or may be recoverable from the landowner.

Landowner to pay expenses of survey ordered by Admiralty, or Board of Trade.

42. [Saving rights of her Majesty's principal secretary of state for war.]

43. [Rights of commissioners of sewers saved.]

44. [Works connected with Thames to be executed under direction of conservators of Thames.]

45. [Metropolitan Board of Works, &c. protected.]

46. [Water companies and commissioners protected.]

47. [Rivers, canals, &c. protected.]

48. The commissioners shall, if and as they see occasion, cause any improvements in progress under this act to be inspected by a commissioner or assistant commissioner, or an engineer or surveyor, to ascertain the due execution thereof.

Commissioners may inspect works.

And with regard to Charges for Improvements under this act, be it enacted as follows:

Charges for Improvements.

49. When the commissioners are satisfied that the improvements sanctioned by them, or some part thereof, have been properly executed, either according to the specifications and plans or drawings approved of by them, or with such deviations therefrom as in their

Commissioners to execute charge on

APPENDIX.

completion of works, or of some part thereof.

Expenses of application and certain contracts may be included in charge.

The charges to be by way of rent-charge created by absolute order;

and may be made according to form in Schedule (B).

Expenditure made under this act may be charged under acts of improvement companies.

Improvement companies may exercise the powers of this act, on conforming to its procedure.

As also companies authorized to execute improvements in the United Kingdom.

Absolute order to be conclusive evidence of charge.

Registry of rent-charges in Ireland, Middlesex, Yorkshire and Scotland.

judgment will not diminish the permanent benefit accruing from such improvements to the lands wherein they have been made, they shall execute a charge under their hands and seal upon the inheritance or fee of the lands comprised in the provisional or other sanctioning order, or some sufficient part thereof, for the sum by the same order expressed to be chargeable in respect of such improvements, if all the said improvements have been completed, or for a proportional part of such sum if a part only of the said improvements has been executed, together, in either case, with the interest by the same order expressed, and with the amount, if any, which shall have been paid in respect of the purchase of adjoining lands, or of any easement, authority or right in, through, over or affecting adjoining lands, with interest thereon at the like rate.

50. If the landowner is desirous that the inheritance or fee of the lands improved should be charged with the expenses of and incident to his application to the commissioners, or his contract with any company or person relating to the execution of the improvements, or to the advance of money for their execution, the commissioners may ascertain the amount of the costs, charges and expenses properly incurred preparatory or in relation to and consequent on such contract, and the application to the commissioners or either of them, and may include in the principal money charged on the inheritance or fee of such lands the amount of such costs, charges and expenses, and of the settled or taxed costs, if any, which a court or judge shall have ordered as aforesaid to be deemed and taken to be part of the expenses of and incident to the application for improvements, or such part thereof as the commissioners think fit; and the commissioners may also include in such principal money interest at a rate not exceeding five pounds per centum per annum on all payments forming part of the same principal money from the respective dates of such payments to that of the absolute order, but so that no interest shall be allowed on any such payment for more than six years; provided that the total amount of the principal money to be charged on the lands improved under the provisions of this act shall not in any case exceed that to which, in the opinion of the commissioners, the inheritance or fee of the lands improved will be durably benefited by the improvements.

51. Every charge under this act shall be created by way of rentcharge, payable half-yearly, extending over the term of years fixed by the provisional or other sanctioning order, and the first payment thereof to be made six months after the time when the works in respect of which the same was granted were executed to the satisfaction of the commissioners; and the payment for each half year shall be, and be expressed to be, as to part thereof a repayment of a certain amount of principal money, and as to the remainder thereof a payment of interest; and the charge shall be duly stamped for denoting payment of the proper ad valorem stamp duty which would be payable on a mortgage for securing the like amount as the principal money thereby charged, and shall be called an absolute order; and a copy of every such absolute order shall be authenticated by the seal of the commissioners, and shall be kept by them; and such copy, and any copy thereof authenticated by their seal, shall be evidence of the contents and purport of the same absolute order.

52. Charges under this act shall be made according to the form in the schedule (B.) hereto annexed, or as near thereto as the circumstances of the case will admit.

53. Whenever, by assignment, under the twenty-sixth section hereof or otherwise, a company having power to execute or advance money for the improvement of land shall become entitled to the creation of any charge under either the forty-ninth or the seventy-eighth section hereof, the commissioners shall, if required, but subject to the provisions hereinbefore contained, create such charge in the form of, and so that it may also operate as, an absolute or other corresponding order under the act or acts applying to such company.

54. Any company authorized by act of parliament to execute or advance money for the improvement of land, by giving notice to the commissioners of their intention to avail themselves of any of the powers given by this act, shall be held to have adopted the same, and thenceforth all the procedure of such company shall be carried on under and in accordance with this act only; and any such company which shall adopt this act as hereinbefore provided may, with the sanction of three-fourths of the shareholders present at an extraordinary meeting of the company specially convened for the purpose, execute or advance money for the execution of any improvement authorized by this act in any part of the United Kingdom, although not so authorized by any act or acts relating to the company.

55. The execution of the absolute order by the commissioners shall be conclusive evidence in all courts, and for all purposes, of the validity of the charge thereby expressed to be made, and no inquiry shall be permitted either into the title or estate of the landowner, or into the due performance of anything required to be done by this act, or as to any other matter on which the validity of such charge might but for this enactment have depended.

56. A memorial of every absolute order of the commissioners whereby a rentcharge is created on land in England and Wales, in pursuance of this act, shall be registered at the office of the land registry in England, and a memorial of every absolute order of the commissioners whereby a rentcharge is created on land in Ireland, in pursuance of this

act, shall be entered in the proper office for the registration of deeds and wills, and such memorials respectively shall express and contain the date of the order, the name and address of the landowner, the particulars of the lands charged, the amount of the rentcharge, and the period during which the same shall be made payable; and the production of the absolute order, sealed with the seal of the commissioners, shall be a sufficient authority to the registrar for the entry of such memorial at the proper registry office; and all grants of rentcharges on lands in Scotland shall be registered in the general or particular register of sasines: provided that every rentcharge to which the present clause applies shall have priority as hereinafter declared, any law or usage to the contrary notwithstanding.

57. [Landowner may borrow the amount of certain public assessments, and charge same on inheritance;]

58. [In form specified, together with costs of application.]

59. From the date of the absolute order, the grantee thereof, and his executors, administrators, successors and assigns, shall have a charge on the lands therein comprised for the principal money from time to time remaining undischarged, by payment of the rentcharge, with interest, at the rates in the several cases hereinbefore respectively expressed, and such charge shall have priority over every other then existing and future charge and incumbrance affecting such lands or estates and interests respectively, whether created under the powers of any act of parliament or otherwise, except quit rent, crown rents, chief rents, feu duties, ground annuals, and other charges incident to tenure, tithe commutation rentcharges and teinds, charges created or to be created under any act authorizing advances of public money for the improvement of land, and any charges created under this act or charges of prior date created under any other existing act of parliament authorizing the charging of lands with the expense of and incident to their improvement: provided that in case a part only of the land charged is subject to a mortgage or other incumbrance, the charge created under the authority of this act shall have priority over the mortgage or other incumbrance only to the extent of a due proportion of such charge, when and so soon as the same shall be ascertained under and pursuant to the sixty-sixth section of this act.

Grantee to have charge for principal money from time to time unpaid, with priority over other incumbrances.

60. Every charge under this act shall, as regards the holder thereof, be deemed to be personal property, except that any holder of such a charge, who shall desire to extinguish the same by reuniting it to the land charged, shall have power for that purpose to direct by any deed that it shall be reunited to and merge in the beneficial interest in the said land, as if it were of the same nature and tenure therewith; but all trustees, directors, and other persons who may be directed or authorized to invest any money on real security shall (unless the contrary be provided by the instrument directing or authorizing such investment) have power, at their discretion, to invest money in such charges, or on mortgages thereof.

Charges to be personal property, but money authorized to be invested on real security may be invested therein, or on mortgages thereof.

61. No charge on land made by any absolute order by virtue of this act shall be deemed such an incumbrance as shall preclude a trustee of money, with power to invest the same in the purchase of land or on mortgage, from investing it in a purchase or upon a mortgage of the land so charged, unless the terms of his trust or power expressly provide that the land to be so purchased or taken in mortgage be not subject to any prior charge.

Charges not to preclude trustees from investing in purchase or on mortgage of lands.

62. [Proprietor of Scotch entailed estate may avail himself of act, and rentcharge to be charge on such estate]

63. Every rentcharge on land by virtue of this act may be recovered by the person or company for the time being entitled to the same, as to lands in England or Ireland, by the same means, and with the like powers, and in like manner in all respects as a rentcharge in lieu of tithes would be recoverable if charged on the same land under the act of the seventh year of King William the Fourth for the commutation of tithes in England and Wales, or under the act of the first and second years of the reign of her present Majesty to abolish compositions for tithes in Ireland and to substitute rentcharges in lieu thereof, and the several acts passed for amending the same, as the case may be, and as if such rentcharge by virtue of this act were a rentcharge in lieu of tithes made payable to such person or company under the said acts respectively, and as to lands in Scotland by the same means and in the like manner in all respects as any feu duties or rent or annual rent or other payment out of the same lands would be recoverable.

Rent-charges to be recoverable as tithe rent-charges or feu duties.

64. If any rentcharge payable under this act shall be in arrear, such arrear shall not bear interest for a longer period than six months, but interest at five pounds per centum per annum in respect of the same, for any period not exceeding six months, may be recovered in the same manner as the sum in arrear: provided that if, at the expiration of six months from the time of any payment falling into arrear, there shall not be upon the land charged a sufficient distress to answer and satisfy the said payment and interest thereon for the said period of six months, together with the costs and charges of such distress, then the arrears of such payment shall continue to bear interest at the rate of five pounds per centum per annum until payment or satisfaction thereof, and such interest may be recovered in the same manner as the sum in arrear.

Interest on arrears of rent-charges.

65. The grantee or other person for the time being entitled to any rentcharge created under this act may assign the same by deed duly stamped, and wherein the consideration

Assignment of charges.

APPENDIX.

Tenants for life
to keep down
rent-charges.

Tenant may
deduct rent-
charge, unless he
has agreed to pay
it.

Rent-charges
may be appor-
tioned, or part of
the land charged
released there-
from.

Form, registry
and effect of
orders of appor-
tionment and
release.

is truly stated; and such assignment may be according to the form in schedule (C.) to this act annexed, or to the like effect; and all assignments made in such form, or as near thereto as the circumstances of the case will admit, shall be effectual to vest, both at law and in equity, the charge thereby assigned, and all the powers, authorities, rights and remedies of the assignor with reference to such charge, in the assignee, his successors, executors, administrators and assigns respectively, and notice of such assignment shall be sent to the commissioners at their office in London.

66. Every landowner on whose land a charge shall have been made under this act, and every succeeding tenant for life, tenant in tail, and other person having a limited interest in the land so charged, shall, as between himself and the persons in remainder or reversion, be bound to pay the yearly or other periodical payments of such charge which shall become payable during the continuance of his interest; and in case he be in the actual occupation or entitled to an apportioned part of the rents and profits of such land up to the time of the termination of his interest, he shall also be bound to pay an apportioned part of the yearly rent or other periodical payment of such charge which shall become due next after the termination of his interest, proportional to the time which elapsed between the day for the previous payment and the day of such termination: provided that no person becoming entitled in possession to any estate or interest in the land shall be liable, as between himself and the persons entitled to the rentcharge, to pay any arrears of the charge remaining unpaid at the time of his becoming so entitled in possession beyond the amount of two years payment of such charge: provided also, that the amount paid by any person in respect of such arrears, and any costs occasioned by nonpayment thereof shall be a debt from the person who in the first instance ought to have paid the same, or from his estate, to the person who paid the same, and shall be recoverable accordingly.

67. If any tenant or occupier at a rent join in the application for an improvement, or by writing under his hand signify to the commissioners, or to an assistant commissioner or engineer, his consent to become charged with the charge, or an apportioned part thereof, as hereinafter mentioned, such tenant or occupier shall during his tenancy or occupation be liable to pay the charge, or an apportioned part thereof, as hereinafter mentioned; and in case the charge be made in respect of the improvement as well of other land as of the land included in such tenancy or occupation, the commissioners may, upon such consent of the tenant or occupier, declare in the absolute order what portion of the whole charge payable in respect of the improvement shall be payable by such tenant or occupier during his tenancy or occupancy in respect of the probable improvement of the land included in his tenancy or occupation; but, except as aforesaid, every tenant or occupier who pays such charge shall be entitled to deduct the amount thereof from the rent payable by him to the landowner, and shall be allowed the same in account with him.

68. If at any time land charged under this act, or under any other act authorizing the creation of charges by the commissioners, is occupied in separate farms or other holdings, or has become the property of separate owners, or the owner thereof is entitled thereto under separate titles or for distinct and separate interests, or is desirous to sell or dispose of part of such land, or part only of such land is subject to any mortgage or other incumbrance, or for any other reason it would be desirable that the charge should be apportioned or a part of the land charged released therefrom, the commissioners may, with the consent of the landowner, or if the land has become the property of separate owners, or a part thereof is subject to any mortgage or incumbrance, then upon the application of any one of such owners, or of such mortgagee or incumbrancer, but in every case with due notice to the grantee or assignee of the charge, or the husband, guardian, tutor, curator, committee or trustee of such grantee or assignee, if a married woman, infant, lunatic, idiot, or furious or fatuous person, and to such other parties (if any) as the commissioners think right, either release from such charge any part of the land charged therewith, or apportion such charge so that a separate and distinct charge may become charged on each separate farm or holding, or on the land of each landowner, or on the land held under each separate title or for each distinct and separate interest, or on the part or each part which the landowner is desirous to sell or dispose of and the part intended to be retained by him, or on the part subject to such mortgage or other incumbrance and on the residue, or on any other separate parts of the land, but so that no charge charged under such apportionment shall be less than twenty shillings for each half-yearly payment: provided that no lands shall, in consequence of any such apportionment or release, become charged with any greater amount than that to which, in the opinion of the commissioners, they have been durably benefited by the improvements in respect of which such charge was created.

69. Every such apportionment or release shall be made by an order under the hands and seal of the commissioners, and shall be in the form set out in Schedule (D.) or (E.) to this act, as the case may be, or as near thereto as circumstances will permit, and as to lands in England and Wales, or in Ireland or Scotland, shall be registered in the manner mentioned in the fifty-fourth section hereof, or as near thereto as circumstances will permit; and a copy of every such order shall be authenticated by the seal of the commissioners, and shall be kept by them; and such copy, or any copy thereof authenticated by their seal, shall be conclusive evidence in all courts and for all pur-

poses of the contents and purport of the same order, and of the validity of the apportionment or release thereby expressed to be made; and such order shall take effect from the date thereof, subject to the continuance of all rights and remedies for the recovery of monies which before the date thereof may have become payable out of any lands under the charge so apportioned or released.

70. Every charge apportioned or released as aforesaid shall be recoverable out of the lands on which the same is charged by the order of apportionment, or which shall not by the order of release be released therefrom, in the same manner as if the same had been originally charged on such lands respectively, and shall, for all the purposes of this act, or of the act under which the original charge was created, be deemed to be an original charge on such lands by absolute order.

71. Where any lands are charged by more than one absolute order, any order of apportionment or release under the preceding sections hereof may comprise all or any number of the rentcharges existing by virtue of such absolute orders.

And with regard to the upholding Improvements under this act, be it enacted as follows:

72. So long as any land shall continue charged with any charge hereunder, the person for the time being bound to make the periodical payments of such charge shall uphold the improvements and works in respect of which such charge is made, and shall keep clear and open the outfalls and watercourses of all the drains (if any), and shall, if required either by the commissioners or by any person who shall for the time being be interested in such charge under any assignment or mortgage thereof, once in every year certify to the commissioners the state of such improvements and works, and of such outfalls and watercourses (if any); and if such person shall not so keep and uphold such improvements and works, and such outfalls and watercourses (if any), or shall fell, or cause or knowingly permit to be felled, except in proper thinning, any trees planted under the authority of this act as an improvement, he shall be liable to an action on the case, in the nature of an action of waste, for the damage thereby occasioned, at the suit of any person entitled to any estate in remainder and reversion in such lands.

73. Every person for the time being bound to make the periodical payments of any charge may from time to time, by himself, his engineers, surveyors, agents, servants and workmen, enter upon any lands in, through or upon which any of the works have been executed, to ascertain the condition of the works, and to maintain and repair the same, nevertheless paying to the person for the time being enabled by this act to sell or grant any easement in such lands, in case the parties differ about the same, such compensation as shall be determined by two justices or the sheriff, as provided by "The Lands Clauses Consolidation Act, 1845," or "The Lands Clauses Consolidation (Scotland) Act, 1845," for settlement by justices and sheriffs respectively of questions of disputed compensation: Provided that, as to any lands adjoining or near the land improved, to which the provisions of the acts of the tenth and eleventh years of the reign of her present Majesty, chapters thirty-eight and one hundred and thirteen, and those of the third part of "The Land Drainage Act, 1861," are hereinbefore respectively made applicable, the powers of entry upon such lands for any of the purposes aforesaid shall be subject to and be regulated by the provisions of those acts respectively.

74. When any farmhouses, farm buildings or works susceptible of damage by fire shall have been erected, improved or added to under this act, then, so long as any land shall continue charged under this act in respect thereof, the person for the time being bound to make the yearly or other periodical payments of such charge shall insure and keep insured against damage by fire all such farmhouses, farm buildings and works in an amount equal to the principal amount originally secured by such charge at the least; and such person shall once in every year certify to the commissioners the fact of such insurance, and the particulars thereof, and that the premium and duty for such insurance for the year then current have been duly paid; and if such person shall not insure or keep insured such farmhouses, farm buildings and works, or shall not duly certify the matters aforesaid, it shall be lawful for the person entitled to the charge for the time being, with the assent of the commissioners, to insure against damage by fire the said farmhouses, farm buildings and works in an amount not exceeding the principal amount originally secured by such charge, and either in the name of the person by whom such default shall have been made, or in the name of the landowner mentioned in the absolute order, and thereafter to keep the same insured during the continuance of the said charge; and the person for the time being bound to make the periodical payments of such charge shall from time to time, on the day on which the next payment shall become due on the said charge, repay to the person for the time being entitled to the said charge any sums so paid by him for premium and duty on such insurance; and in default of such payment, the amount of such premium and duty, with interest thereon at the rate of five pounds per centum per annum from the time of such default, may be recovered by the last-mentioned person by the same means and in the like manner as if the same had been payable as part of the said charge.

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Charges apportioned, or from which part of the lands have been released, to be deemed original charges.

Several charges may be dealt with in one order of apportionment or release.

Upholding Improvements.

Improvements to be upheld, and condition thereof certified, if required.

Power to enter on neighbouring lands for repair of works, making compensation.

Farmhouses, &c. to be insured: power to insure in case of default.

APPENDIX.

Inclosure commissioners may compel maintenance of improvements.

75. If it shall be represented to the commissioners that the person for the time being bound to make periodical payments of any charge created under this or any other existing act authorizing the advance of money for the improvement of land has neglected to uphold and maintain the improvements in respect of which the charge was executed, or any of them, the commissioners may, upon security being given for such an amount as they may consider necessary to cover any expenses that may be incurred by them, cause an inspection of the works to be made by an assistant commissioner, engineer, or surveyor.

After such inspection, if the commissioners are satisfied that the improvements have not been upheld and maintained, they shall cause notice to be given to the person bound to make the said periodical payments requiring him to execute the works necessary to uphold and maintain the same within three calendar months from the time of giving such notice.

If such works shall not be executed to the satisfaction of the commissioners within such three months, they may cause such works as in their judgment shall be necessary to uphold and maintain such improvements to be executed by a person appointed by them.

The costs thereof, including the expenses of the assistant commissioner, engineer or surveyor, shall be repaid by the person bound to make the said periodical payments to the person entitled to the charge, on request, and in default thereof the amount so certified may be recovered, with all expenses incidental to the recovery thereof, in the name of the person for the time being entitled to the charge, by the same means and in the like manner as if the same had been payable as part of the said charge.

Inclosure commissioners may give relief from maintenance of improvements.

76. If it shall be represented to the commissioners that it is not expedient or necessary that any works for the cost of which there shall be a subsisting charge, or any part of such works, should be upheld or maintained, the commissioners may, on having deposited with them a sum to be fixed by them, to cover all expenses, cause the said works to be inspected by an assistant commissioner, engineer or surveyor.

If after such inspection and notice to the parties who were served with notice of the application to charge the land or their representatives, and such other persons, if any, as the commissioners may direct, the commissioners shall find and certify that it is not expedient or necessary that the works or any of them should be upheld or maintained, thereupon the person for the time being bound to make the said periodical payment shall be relieved from all liability in respect of the maintenance of the works referred to in the commissioners' certificate.

Admiralty may remove works abandoned or fallen into decay.

77. If any embankment or work constructed under the powers of this act in, under, over, through or across any tidal water or navigable river, or if any portion of any embankment or work which affects or may affect any such water or river, or the access thereto, shall be abandoned, or suffered to fall into disuse or decay, it shall be lawful for the Admiralty or the Board of Trade, as the case may require, to abate and remove the same, or such part or parts thereof as he or they may at any time or times deem fit and proper, and to restore the site thereof to its former condition, at the cost and charge of the landowner, the amount of which cost and charge shall be a debt due from the landowner to the crown, and be recovered accordingly, with costs of suit.

Subscription to Railways.

Conditions for application to commissioners.

And with regard to charging Lands with money subscribed for the Construction of Railways, be it enacted as follows:

78. In case any landowner shall be desirous of subscribing for any shares or stock in the capital, whether original or additional, of a company having power to construct a railway or navigable canal, or any branch or extension railway or navigable canal, or any deviation of a line of railway or a navigable canal already sanctioned, the works for which such subscription is to be made being unfinished, or in any additional capital to be raised for the completion of any such railway, canal, branch, extension or deviation, the same being upon or near to and which will improve or benefit the lands of such landowner, and who shall be desirous that such amount, or any part thereof, may be charged upon the lands so to be improved, it shall be lawful for him to apply to the commissioners for that purpose within the time limited by the railway or canal company's act or acts for the construction of the works in question.

Commissioners' proceedings on application.

79. If the commissioners shall think fit to entertain such application, they shall cause all such inquiries to be made, and take all such other steps, as shall seem to them expedient for obtaining information as to the circumstances; and all the provisions of the thirteenth, fourteenth, fifteenth, seventeenth, eighteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fifth and fifty-first sections of this act shall apply to the case as though an improvement were to be made of the lands proposed to be charged.

Provisional order sanctioning charge.

80. If the commissioners shall be satisfied that the railway or canal, when constructed and open for traffic, will effect a permanent increase of the yearly value of the lands exceeding the yearly amount proposed to be charged thereon, they shall execute and deliver to the landowner a provisional order, under their seal and the hands of two of them, expressing their sanction of the charge proposed; and such order shall be made as near to the form set forth in the Schedule (A.) to this act as the circumstances will permit, and

shall, with the right to a charge thereby created, be assignable by endorsement either absolutely or by way of security to any company or person that may agree to advance, by paying the same to the railway or canal company, the amount authorized to be charged, and notice of such assignment shall be given to the commissioners, and shall be registered by them.

81. Every company empowered by act of Parliament to lend money for the improvement of land is hereby empowered to advance, by paying the same to the railway or canal company, any money authorized to be charged in manner aforesaid.

82. When the railway or canal shall have been completed and opened throughout for public traffic, and as many shares in the capital of the railway or canal company subscribed for or held as aforesaid by the landowner as shall be equal in nominal amount to the money authorized to be charged shall have been fully paid up, and the certificates for such shares shall have been deposited by the landowner with the commissioners, the commissioners shall, by an absolute order under their hands and seal, execute to the landowner or his assignees a charge upon the inheritance or fee of the lands in question of the amount authorized as aforesaid to be charged, and may, if the landowner shall so desire, include, with the principal money so charged, the costs, charges and expenses of the application and orders, and of any advance which may have been made to him of the amount authorized to be charged, and such settled or taxed costs and interest as mentioned in the fiftieth section hereof, subject nevertheless to the proviso in the same section contained.

83. Such absolute order shall be made in the form in the Schedule (B.) to this act annexed, or as near thereto as the circumstances will permit, and all the provisions of this act relating to absolute orders, whether in respect of the form or effect of such charges or orders or otherwise, except only the provisions for the apportionment and release of such charges, shall apply to absolute orders under the last preceding section as far as the circumstances admit.

84. The landowner shall forthwith give notice to the railway or canal company of the execution of such absolute order, and of the deposit of such certificates with the commissioners, and thereupon the company shall make an entry or memorial in their register of shareholders with respect to such shares of the fact of such absolute order having been executed.

85. From the time of such notice, and during the whole term of the charge created by such absolute order, the person who for the time being shall be bound to make the periodical payments of such charge shall be entitled to the said shares, and if the same shall not at the time being be registered in his name, the person registered as the holder thereof shall, as between himself and the person so entitled, hold them in trust for such last-mentioned person.

86. The person so for the time being entitled may at any time require the person registered as the holder of the said shares, or his representatives, to transfer to him the said shares, and such transfer shall thereupon be made accordingly, but at the expense in all respects of the transferee; and upon the production of such transfer duly stamped, and of a certificate by the commissioners under their hands and seal that the transferee is the person at the time being bound to make the periodical payments of the said charge, the railway or canal company shall register such transfer.

87. With the exception of such transfers as may from time to time be made for the purpose of transferring the shares to the person so for the time being entitled thereto, the said shares shall not under any circumstances be transferred or disposed of by the registered holder, whether he be the person for the time being entitled thereto or not, during the term of the said charge; but during the term of such charge the registered holder for the time being of the said shares shall have all the other rights and powers of a shareholder in the railway or canal company in respect of the said shares; and the railway or canal company shall not be bound to see to the application of any dividend received by such registered holder, but as between himself and the person or persons for the time being entitled to such shares he shall hold any dividend which may be received by him in trust for the person who, at the time when such dividend became payable, was the person entitled to the said shares.

88. Whenever any person or those whom he legally represents as their executor or administrator shall have been bound to make, and shall have made, such and so many periodical payments of the charge as to repay thereby principal money which, in proportion to the whole amount of principal money charged and the whole number of the said shares, shall correspond to any integral number of shares, with or without a fraction over, it shall be lawful for the commissioners, on the application of such person, made either during the term of the charge or within two years after its expiration, to certify that fact under their hands and seal, and by the same certificate to appropriate to such person certain specified shares to such integral number, and to deliver to him the corresponding share certificates; and upon the production to the railway or canal company of such certificate by the commissioners and share certificates, it shall be lawful for such person, if he shall not already be the registered holder, to require such shares

APPENDIX.

Companies empowered to lend.

Commissioners' absolute order and its conditions.

Form and effect of absolute order.

Notice thereof to be entered in register of shareholders.

Person liable to pay charge to be entitled for the time being to the shares,

and to have them stand in his own name.

Rights and duties of persons registered for the time being in respect of the shares.

Entire shares to belong to parties in proportion to their payments, and to be released to them from time to time.

SCHEDULE (B.)

The Improvement of Land Act, 1864.

APPENDIX.
Schedule (B).County of
Parish of
No.*Absolute Order.*

[Here insert name of landowner] of [here insert address.]

Loan of pounds for the improvement of , in the parish of in
the county of .

The Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," do, by this absolute order under their hands and seal, charge the inheritance or fee of the lands mentioned in the schedule hereto with the payment to of the yearly sum of pounds shillings and pence, payable half-yearly on the day of and the day of in every year, for the term of years, and being a proportionate repayment, according to the table annexed, of the capital sum of pounds, with interest at per cent. per annum, the first half-yearly payment to be made on the day of .

Dated this day of , 18 .

SCHEDULE of Lands charged.

Name, &c. of Lands.	Landowner.	Occupier.	Parish.	County.	Total Acreage.

TABLE.

Half-yearly Payments.	Proportionate Repayments of the Loan.	Interest at £ per Cent. per Annum.

SCHEDULE (C.)

Assignment of a Charge.

(Proper heading.)

I, A. B., &c., in pursuance of "The Improvement of Land Act, 1864," hereby, in consideration of [state the consideration], assign to C. D., of &c., his executors, administrators and assigns, the charge of the sum of £ and interest at the rate of, &c. [or the charge of, &c., as the case may be], which by virtue of the absolute order, No. [], executed by the Inclosure Commissioners for England and Wales, and dated, &c., is an absolute charge on the inheritance of the lands mentioned in the schedule hereto, and all the powers, authorities, rights and remedies of with reference to such charge. [Here add such clauses and provisions, if any, as are agreed on between the parties.]

As witness, &c., this day of (L. S.)

SCHEDULE of the Lands charged.

Name, &c. of Lands.	Landowner.	Occupier.	Parish.	County.

TABLE.

APPENDIX.
Schedule (D).

Half-yearly Payments.	Proportionate Repayments of the Loan.	Interest at per Cent. per Annum.

SCHEDULE (E.)

Form of Order for Exempting Lands.

The Improvement of Land Act, 1864.

County of
Parish of

Whereas, by an absolute order under this act, dated the day of and numbered the lands mentioned in the first and second schedules hereto were charged with the payment to of the yearly sum of , payable half-yearly for the term of years :

And whereas, upon application made to them, the Inclosure Commissioners for England and Wales see fit to release and exempt from such charge such of the said lands as are particularized in the first schedule hereto :

Now therefore the said Inclosure Commissioners, in pursuance of "The Improvement of Land Act, 1864," do, by this order, under their hands and seal, release and exempt the said lands mentioned in the first schedule hereto from the charge created by the above-mentioned absolute order, and from all liability thereto, and do hereby declare that the said charge applies to and continues in force as to the lands particularized in the second schedule hereto only.

Dated this day of

SCHEDULE I. (Lands exempted.)

Name, &c. of Lands.	Landowner.	Occupier.	Parish.	County.	Total Acreage.

SCHEDULE II. (Lands still subject to Rentcharge.)

Name, &c. of Lands.	Landowner.	Occupier.	Parish.	County.	Total Acreage.

APPENDIX.

Schedule (F).

SCHEDULE (F.)

Vesting Order.

The Inclosure Commissioners for England and Wales, in pursuance of "The Improvement of Land Act, 1864," do, by this order under their hands and seal, in consideration of £ to them paid by A. B. of transfer to and vest in the said A. B., his executors, administrators and assigns, shares of and in the Railway or Canal Company, numbered , and now registered in the name of C. D.

In witness whereof they have hereunto affixed their hands and seal, this day of , in the year one thousand eight hundred and .

27 & 28 VICT. CAP. 120.

An Act to facilitate in certain Cases the obtaining of further Powers by Railway Companies. [29th July, 1864.]

"Whereas it is expedient that in certain cases railway companies be enabled to obtain further powers on complying with the conditions of a general act of parliament, without being obliged to procure in each case a special act:" be it therefore enacted by (&c. &c.) as follows:

Preliminary.

Short title.
Interpretation
of terms.

1. This act may be cited as "The Railway Companies Powers Act, 1864."
2. In this act—
The term "railway" includes works connected with or for the purposes of a railway, and also a railway authorized to be but not actually constructed:
The term "Railway Bill" means a bill pending in or intended to be introduced into either house of parliament, having for its object or one of its objects to authorize the making of a railway:
The term "the Companies Clauses Acts" means, so far as the enactment in which that term is used relates to England or Ireland, or to a certificate to be operative in England or Ireland, "The Companies Clauses Consolidation Act, 1845;" (a) and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, "The Companies Clauses Consolidation (Scotland) Act, 1845;" together with in each case "The Companies Clauses Act, 1863;" (b)
The term "the Board of Trade" means the lords of the committee for the time being of her majesty's privy council appointed for the consideration of matters relating to trade and foreign plantations.

Description of Cases within this Act.

Act to apply in
cases therein
named.

3. This act shall take effect and apply in each of the cases following; namely,
 - I.—Where a railway company are desirous that authority should be given to themselves and some other railway company or companies to enter into an agreement with respect to all or any of the matters following (c); namely,
 - The maintenance and management of the railways of the companies respectively, or of any one or more of them, or of any part thereof respectively;
 - The use and working of the railways or railway, or of any part thereof, and the conveyance of traffic thereon;
 - The fixing, collecting, and apportionment of the tolls, rates, charges, receipts, and revenues levied, taken, or arising in respect of traffic;
 - The joint ownership, maintenance, management and use of a station or other work; or the separate ownership, maintenance, management and use of several parts of a station or other work;
 - II.—Where a railway company are desirous of obtaining an extension of the time limited for the sale by them of superfluous lands:
 - III.—Where a railway company incorporated by special act or by certificate under "The Railways Construction Facilities Act, 1864" (d), are desirous of obtaining authority to raise additional capital.

Application for Certificate.

As to application
for certificate by
company to
Board of Trade.

4. In any such case the company, if desirous to obtain a certificate under this act, shall proceed as follows; namely,
 - (1.) They shall apply to the board of trade for a certificate under this act:
 - (2.) They shall lodge at the office of the board of trade a draft of the certificate as proposed by them:
 - (3.) They shall publish notice of the application according to the general rules under this act (e).

(a) 8 & 9 Vict. c. 16, ante, p. 24.

(b) 26 & 27 Vict. c. 118, ante, p. 224.

(c) See also 26 & 27 Vict. c. 92, s. 22

et seq., ante, p. 219.

(d) Post, p. 253.

(e) Post, p. 252.

5. As soon as conveniently may be after the time for completion of the required notice, the board of trade shall proceed to inquire whether the company have complied with the requirements of the general rules respecting notice.

6. The board of trade, before settling a draft of a certificate, shall take into consideration any representation made to them, and shall duly inquire into the merits of any objection brought before them, respecting the application.

Opposition of Railway or Canal Company to Application.

7. If in any case any railway or canal company desire to be heard by counsel, agents, and witnesses against the application of the promoters, and (within such time as is prescribed by general rules under this act) lodge at the office of the board of trade a notice in writing to that effect (hereinafter referred to as a notice of opposition) in the form set forth in the schedule to this act (with such variations as circumstances require), in that case the board of trade, if the railway or canal company lodging the notice would be affected in any way by the proposed certificate, shall not proceed on the application of the promoters.

8. Where the board of trade do not proceed on the application they shall, not later in any year than the fifteenth day of February, if parliament is then sitting, and if not, then within seven days after the next meeting of parliament, lay before both houses of parliament a copy of the draft certificate lodged by the promoters and of the notice of opposition; and the promoters shall be at liberty to seek by way of bill in the same session, in such manner and on such conditions as the houses of parliament respectively by standing order or otherwise from time to time direct, such powers as were sought by them by way of certificate.

Settlement of Draft Certificate.

9. Where the board of trade proceed on the application, then, on being satisfied that the company have complied with the requirements of the general rules respecting notice, they may, if they think fit, settle a draft of a certificate, certifying to the effect following; namely,

In the first-mentioned case, that the companies in the certificate specified are authorized to agree among themselves with respect to all or any of the matters aforesaid in the certificate specified;

In the secondly-mentioned case, that the time limited for the sale by the company of superfluous lands is extended as in the certificate specified;

In the thirdly-mentioned case, that the company are authorized to raise, as capital, for the purposes of the certificate, such additional sum of money as therein limited, by the issue of new shares or new stock, either ordinary or preference, or partly ordinary and partly preference, or partly in that mode and partly by borrowing on mortgage, at the option of the company, or as may be prescribed in the certificate, and with power to create and issue debenture stock.

10. The board of trade may (subject to the provisions of this act, and having regard to the provisions of any special act relating to any company empowered by a certificate), insert in the certificate such provisions as they, according to the circumstances of the case, deem necessary or proper for better effectuating the purposes of the certificate, and the same shall be deemed to all intents part of the certificate.

11. The certificate may be in the form set forth in the schedule to this act, with such provisions as aforesaid.

Submission of Draft Certificate to Houses of Parliament.

12. The board of trade shall lay the draft certificate settled by them before both houses of parliament within seven days after the same is settled, if parliament is then sitting, or if not, then within seven days after the next meeting of parliament, but not later in any year than the first day of June.

13. On the draft certificate being settled the promoters shall give notice thereof according to general rules under this act.

14. If either house of parliament within six weeks after the draft of a certificate settled by the board of trade is laid before that house resolves that the certificate ought not to be made, the same shall not be further proceeded with.

Issue and Publication of Certificate.

15. If neither house of parliament within the period aforesaid thinks fit to resolve that the certificate ought not to be made, then as soon as the period of six weeks after the laying of the draft certificate before both houses of parliament has expired the board of trade may make and issue a certificate in conformity with such draft.

16. The certificate shall be published as follows; namely,

Where one company only is thereby empowered, then in the London, Edinburgh, or Dublin Gazette, according as the head office of the company is situate in England, Scotland or Ireland:

APPENDIX.

Said Board to inquire if requirements have been complied with; and to consider all representations and objections.

On railway or canal company affected giving notice of opposition, proceedings before Board of Trade to cease.

Further proceedings to be in Parliament.

Power to Board of Trade to settle certificate according to nature of application as herein named.

Insertion of conditions in certificate.

Form of certificate.

Draft certificate to be laid before houses of Parliament.

Notice thereof to be given.

If either house resolve that certificate ought not to be made, it shall not be proceeded with.

If neither house resolve that certificate ought not to be made, Board of Trade may issue the same.

Publication of certificate in Gazette.

APPENDIX.

Where two or more companies are thereby empowered, then in one or more of the gazettes, according as the several head offices of the companies respectively are situate in England, Scotland and Ireland respectively.

Effect of Certificate.

Operation of certificate as special act.

17. As from the time (not being prior to such publication) in the certificate prescribed, and if none is prescribed, then as from the time of such publication, the certificate shall have the same force and operation, and shall be as absolutely valid and conclusive to all intents as if the contents thereof (taken in conjunction with this act) had been expressly enacted by parliament; and the validity of the certificate shall not be impeached on account of any alleged informality in any court or elsewhere.

Judicial notice of certificate.

18. The certificate shall be judicially noticed without being specially pleaded.

Interpretation of certificate.

19. Terms used in the certificate shall have the same meanings as they have when used in this act.

Parts of 26 & 27 Vict. cc. 92 and 118, incorporated.

20. There shall be incorporated with the certificate (which shall for this purpose be deemed the special act)—

In the first-mentioned case, Part III. of "The Railways Clauses Act, 1863" (b).

In the thirdly-mentioned case, the Companies Clauses Acts (c).

Rule as to short distances.

21. In the first-mentioned case, during the continuance of any agreement for the joint working of any two railways, in the calculation of tolls and charges for short distances in respect of traffic conveyed on both railways, the distances traversed shall be reckoned continuously on such railways as if they were one railway.

Restriction as to issue of shares.

22. It shall not be lawful for any company empowered by a certificate under this act to issue any share created under the authority of the certificate, nor shall any such share vest in the person accepting the same, unless and until a sum not being less than one-fifth part of the amount of such share is paid up in respect thereof.

Restrictions on company as to borrowing, &c.

23. In the thirdly-mentioned case the company, whether incorporated by special act or by certificate, shall be subject to the following restrictions; namely,

- (1.) They shall not exercise any power of borrowing money under the certificate until the whole of the share capital authorized by the certificate is subscribed for or taken, and until one-half thereof is actually paid up, and until they prove to the justice who is to certify under section forty of "The Companies Clauses Consolidation Act, 1845," or (in Scotland) to the sheriff who is to certify under section forty-two of "The Companies Clauses Consolidation (Scotland) Act, 1845," as the case may be, before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one-fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares are taken in good faith, and are held by the subscribers or their assigns, those subscribers or their assigns being legally liable for the same (of which matters the certificate of the justice or sheriff shall be sufficient evidence):
- (2.) They shall not borrow a larger sum in the whole than one-third of the amount of the share capital authorized by the certificate:
- (3.) They shall not, out of money raised under the certificate by calls or borrowing, pay interest or dividend to a shareholder on the amount of calls made on his shares, whether created under the certificate or otherwise (but this provision shall not prevent them paying to a shareholder under the certificate such interest on money advanced by him beyond the amount of calls actually made as is allowed by the Companies Clauses Acts):
- (4.) They shall not, out of money so raised, pay or deposit any money that may be required to be paid or deposited in relation to any application to parliament or the board of trade:
- (5.) They shall apply every part of the money so raised only for the purposes for which it is by the certificate authorized to be applied.

Miscellaneous.

Power of Board of Trade to reject application.

24. Nothing in this act shall make it obligatory on the board of trade to settle a draft of a certificate in any case, if it appears to the board of trade for any reason that the application for a certificate should not be complied with.

Nothing to exempt railways from operation of general acts.

25. Nothing in the certificate shall exempt any railway to which it relates, or the company to whom that railway belongs, from the provisions of any general act of parliament relating to railways, or to the better audit of the accounts of railway companies, passed before or after the issuing of the certificate, or from any revision and alteration under the authority of parliament of the maximum tolls and charges allowed to be taken in respect of that railway.

Certificate under this and railways construction act.

26. A certificate may be made under this act and "The Railways Construction Facilities Act, 1864," jointly, and in any such case the forms of certificate given in this act and the said act may be adapted to the circumstances of the case.

(b) Ante, p. 219.

(c) See ante, sect. 2.

27. Where, in case the company were proceeding by a railway bill instead of under this act, the approval of the bill in any manner by the members of the company would be required under the standing orders of either house of parliament for the time being in force, the board of trade shall not issue a certificate without being satisfied that the members of the company have in like manner approved of the application to the board of trade.

28. Subject and according to the restrictions and provisions of this act, the board of trade on the application of the company may from time to time amend, extend or vary by certificate any certificate issued under this act, and may by certificate revoke a previous certificate issued under this act.

29. If in any case it is made to appear to the board of trade that any error has been committed in a certificate or in relation thereto, the board of trade may, subject and according to the restrictions and provisions of this act, on the application of the company, body or person affected by the error, and on notice to the company or companies empowered by the certificate, correct the error by a further certificate.

30. A copy of the London or Edinburgh or Dublin Gazette containing a certificate or a copy of a certificate purporting to be printed by the printers of the London, Edinburgh, or Dublin Gazette, shall be conclusive evidence of the certificate and of the due publication thereof, without any proof of the gazette or without any proof of the copy having been in fact so printed, as the case may be.

31. Every company empowered by a certificate shall at all times keep at their head office copies of the certificate printed by the printers of the gazette or one of the gazettes in which the same was published, in such form as general rules direct, to be sold to all persons desiring to buy the same at a price not exceeding one shilling for each copy.

If any company fail to comply with this provision they shall be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which such failure continues after the first penalty is incurred.

32. The provisions of this act relative to the first-mentioned case and to the secondly-mentioned case respectively shall extend and apply, mutatis mutandis, to the proprietors of a railway although not incorporated as a company.

33. Penalties under this act or under a certificate, the recovery and application whereof are not otherwise provided for, shall be recovered and applied as penalties under "The Railways Clauses Consolidation Act, 1845" (*d*), and "The Railways Clauses Consolidation (Scotland) Act, 1845," as the case may require, are recoverable and applicable.

34. The act of the session of the seventh year of king William the fourth and the first year of her majesty (chapter eighty-three), "to compel Clerks of the Peace and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament," shall apply to documents required to be deposited by general rules under this act.

35. The general rules under this act shall in the first instance be those set forth in the schedule to this act; and the board of trade may from time to time, for the better execution of this act, make general rules adding to, altering or revoking any general rules for the time being in force under this act; but any general rules so made by the board of trade shall not have effect unless and until they are laid before both houses of parliament; and if either house of parliament, within six weeks after the same are laid before that house, thinks fit to resolve that the same or any part thereof ought not to take effect, the same or that part thereof (as the case may be) shall not take effect; otherwise all rules made by the board of trade under the present section shall be of the same force and effect as if they had been comprised in the schedule to this act.

All general rules which are to take effect under the present section shall be published in the London, Edinburgh and Dublin Gazettes.

36. Not later than the first day of July in each year the board of trade shall lay before both houses of parliament a report respecting the applications to and proceedings of the board of trade under this act during the year then last past.

APPENDIX.

Approval by members of company required, as under Standing Orders.

Power for Board of Trade to amend or revoke certificate.

Power to correct error.

Proof of certificate.

Copies of certificate for sale.

Application of act to proprietors of railways generally.

Recovery and application of penalties.

Custody of documents.
7 Will. 4 & 1 Vict. c. 83, ante, p. 1.

General rules in schedule, with power for amendment.

Annual report to Parliament by Board of Trade.

The SCHEDULE referred to in the foregoing act.

(i.)—Notice of Opposition.

In the matter of "The Railway Companies Powers Act, 1864," and

The application of the railway company for a certificate, the draft whereof is intituled [*set out title*].

We, the railway [*or canal*] company hereby declare and give notice that we desire to be heard by counsel, agents and witnesses against the granting to the above-named railway company of the powers sought to be obtained by them by the above-mentioned application.

Dated this day of 18 . (L.S.)
Witness, *A. B.*

(*d*) 8 & 9 Vict. c. 20, s. 140, ante, p. 98.

APPENDIX.

(ii.)—*Form of Certificate of Board of Trade.*

The railway company.
Certificate of the board of trade for the extension of time for sale of
superfluous lands [*or as the case may be*].

Whereas the railway company have complied with the requirements of "The
Railway Companies Powers Act, 1864:"

Now, therefore, the board of trade do, by this their certificate, in pursuance of the said
act, and by virtue and in exercise of the powers thereby in them vested, and of every other
power enabling them in this behalf, certify as follows:

[*Here are to follow the provisions of the certificate, showing the powers conferred and the
terms and conditions (if any) imposed.*]

The Board of Trade,
Whitehall.

(Signed) C. D.
Secretary to the Board of Trade.

Dated this day of .

(iii.)—*General Rules.**Form of Application.*

1. The application to the board of trade for a certificate is to be made by a memorial
in writing under the common seal of the company, lodged at the office of the board
of trade.

2. Together with the memorial the company are to lodge a printed draft of the certifi-
cate as proposed by the company.

Advertisements as to Application.

3. Notice of the application to the board of trade is to be given by advertisement pub-
lished as follows: namely,

In every case, once in each of three successive weeks in some one and the same news-
paper of the county, city or town, or county of a city or town, wherein the head office
of the promoters is situate:

In the case referred to in the foregoing act as the first-mentioned case, once in each of
three successive weeks in some one and the same newspaper of each county, city or
town, or county of a city or town, wherein the head office of any railway company
with whom the promoters propose to enter into an agreement is situate:

If in any case there is not any such newspaper as hereinbefore described, then in like
manner in a newspaper of some adjoining or neighbouring county:

In every case where one company only is proposed to be empowered, then in the
London, Edinburgh or Dublin Gazette, according as the head office of the company is
situate in England, Scotland or Ireland:

In every case where two or more companies are proposed to be empowered, then in one
or more of the gazettes, according as the several head offices of the company respec-
tively are situate in England, Scotland and Ireland respectively.

4. The advertisements are to be published either in the month of June or in the month
of November, and not at any other time.

5. Each advertisement is to give the address of an office in London where copies of the
draft certificate will be supplied as hereinafter directed.

6. Each advertisement is to state that all persons desirous of making to the board of
trade any representation, or of bringing before them any objection respecting the applica-
tion, may do so by letter addressed to the secretary of the board of trade on or before the
first day of August or first day of January next succeeding the date of the advertisement,
according as the same is published in the month of June or in the month of November.

7. Within one week after the publication of the latest advertisement a copy of each of
the newspapers and gazettes containing the several advertisements is to be lodged at the
office of the board of trade.

Notice to Landowners.

8. In the case referred to in the foregoing act as the secondly-mentioned case the pro-
motors, in the month of June or in the month of November (as the case may be) in which
the advertisements are published, are to serve notice of the application on the owners of
lands adjoining to the lands to which the application relates.

Notice of Opposition.

9. Notice of opposition by a railway or canal company is to be lodged at the office of
the board of trade, not later than the first day of August or first day of January next suc-
ceeding the date of the advertisement of application, according as the same is published in
the month of June or in the month of November.

Notice of Settlement of Draft Certificate.

10. On the draft certificate being settled by the board of trade the promoters are to serve
a copy thereof, with a notice that the draft has been settled by the board of trade, on every

company, body or person by whom any representation or objection respecting the application was made to or brought before the board of trade, and are also to give by advertisement or otherwise such public or other notice (if any) thereof as according to the circumstances of the case the board of trade direct.

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Supply of Copies of Draft Certificate.

11. From the time of the publication of the first advertisement the promoters are to keep in the office mentioned in this behalf in the advertisement a sufficient number of copies of the draft of the certificate as proposed by them, and are to furnish there copies to all persons applying for them at the price of not more than sixpence each.

12. From the time of the settlement of the draft certificate by the board of trade the promoters are to keep in the office aforesaid copies of the draft supplied to them for that purpose by the board of trade, and are to furnish there copies thereof to all persons applying for them at such price (if any) as the board of trade from time to time direct.

Printing of Certificate.

13. Copies of the certificate printed by the printers of a gazette are to be printed on ordinary white folio paper similar in size to the paper on which the public general acts of parliament are printed for public sale.

27 & 28 VICT. CAP. 121.

An Act to facilitate in certain Cases the obtaining of Powers for the Construction of Railways. [29th July, 1864.]

"Whereas it is expedient to facilitate the making of branch and other lines of railway, and deviations of existing railways, and of railways in course of construction, and also the execution of new works connected with or for the purposes of existing railways: And whereas the object aforesaid would be promoted if, where all landowners and other parties beneficially interested are consenting to the making of a railway or the execution of a work, the persons desirous of making or executing the same were enabled to obtain power to do so, on complying with the conditions of a general act of parliament, without being obliged to procure a special act:" be it therefore enacted by (&c. &c.) as follows:

Preliminary.

1. This act may be cited as "The Railways Construction Facilities Act, 1864."

Short title.

2. In this act—

The term "lands" includes any estate, right or interest in lands:

Interpretation of terms.

The term "the promoters" means in each case the company or persons intending to apply to the board of trade for such a certificate as is hereinafter provided for, and, after the application is made, the company or persons actually making the application, as the case may require:

The term "the railway" means in each case the railway and works intended by the promoters before the issuing of the certificate, and, after the issuing thereof, the railway and works therein comprised, as the case may require:

The term "the lands clauses acts" means, so far as the enactment in which that term is used relates to England, or to a certificate to be operative in England, "The Lands Clauses Consolidation Act, 1845" (a); and so far as the same relates to Scotland, or to a certificate to be operative in Scotland, "The Lands Clauses Consolidation (Scotland) Act, 1845;" together with, in each case, "The Lands Clauses Consolidation Acts Amendment Act, 1860" (b); and so far as the same relates to Ireland, or to a certificate to be operative in Ireland, "The Railways Act (Ireland) 1851" (c), together with acts incorporated in or amending that act:

The term "the companies clauses acts" means, so far as the enactment in which that term is used relates to England or Ireland, or to a certificate to be operative in England or Ireland, "The Companies Clauses Consolidation Act, 1845" (d); and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, "The Companies Clauses Consolidation (Scotland) Act, 1845;" together with, in each case, "The Companies Clauses Act, 1863" (e):

The term "the railways clauses acts" means, so far as the enactment in which that term is used relates to England or Ireland, or to a certificate to be operative in England or Ireland, "The Railways Clauses Consolidation Act, 1845" (f); and so far

(a) 8 & 9 Vict. c. 18, ante, p. 45.

(d) 8 & 9 Vict. c. 16, ante, p. 24.

(b) 23 & 24 Vict. c. 106, ante, p. 148.

(e) 26 & 27 Vict. c. 118, ante, p. 224.

(c) 14 & 15 Vict. c. 70, ante, p. 128.

(f) 8 & 9 Vict. c. 20, ante, p. 73.

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as the same relates to Scotland, or to a certificate to be operative in Scotland, "The Railways Clauses Consolidation (Scotland) Act, 1845;" together with, in each case, "The Railways Clauses Act, 1863" (g):

The term "railway bill" means a bill pending in or intended to be introduced into either house of parliament, having for its object or one of its objects to authorize the making of a railway:

The term "the board of trade" means the lords of the committee for the time being of her majesty's privy council appointed for the consideration of matters relating to trade and foreign plantations.

Contracts for Lands.

Power for promoters of railway and all persons interested in land to enter into provisional contracts for land required.

3. Where promoters of a railway intend to apply, under this act, for authority to make the railway, they and all parties seised or possessed of or entitled to lands required for the railway shall, in order to the purchase or taking and sale of those lands for the railway, have all such powers and capacities as, in order to the purchase or taking and sale of lands required for an undertaking authorized by a special act of parliament, are conferred by the lands clauses acts on the promoters of the undertaking so authorized and on parties seised or possessed of or entitled to lands, or any estate, right or interest in lands, required for that undertaking; all which powers and capacities shall be enjoyed and may be exercised by the promoters, and by all such parties as aforesaid, as fully and effectually in all respects as if the promoters had obtained a special act incorporating the lands clauses acts, and authorizing them to make the railway and to purchase or take the lands required for the same; subject, nevertheless, to the following restrictions and provisions, namely,

(1.) Nothing herein shall confer on the promoters and parties aforesaid any of the powers or capacities conferred by the part of the lands clauses acts with respect to the purchase and taking of lands otherwise than by agreement, or by the part of those acts with respect to the entry upon lands by the promoters of the undertaking, or by such provisions of those acts as provide for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement (except only as to such of those provisions as provide for the determination of the amount of compensation to be paid for enfranchisement of copyholds; and for the purposes of the present section, section ninety-six of "The Lands Clauses Consolidation Act, 1845," relating to the enfranchisement of copyholds, shall be read and have effect as if the limitation of time therein contained were omitted therefrom):

(2.) Any party under disability or incapacity, and not having power to sell and convey or release any lands, except under the lands clauses acts, as applied by the present section, shall have capacity only to contract with the promoters for the sale of those lands, and shall not (before such a certificate of the board of trade, as is hereinafter provided for, comes into operation) have capacity, further or otherwise than if this act had not been passed, to carry the contract into execution, or in pursuance thereof to convey or deliver possession of or release those lands:

(3.) The promoters (before such a certificate as aforesaid comes into operation) shall be empowered by this act only to contract for lands, and they shall not have capacity, further or otherwise than if this act had not been passed, to take or hold lands.

Contracts for sale of lands belonging to the crown or duchy of Lancaster or Cornwall.

4. Where lands required for the railway belong to or are enjoyed by her majesty the queen, her heirs or successors, in right of the crown, or form part of the possessions of the duchy of Lancaster or of the duchy of Cornwall, any contract for the purposes of this act may be entered into in respect of those lands as follows; namely,

In the first-mentioned case, by the Commissioners of her Majesty's Woods, Forests and Land Revenues, or one of them, with the consent of the Commissioners of her Majesty's Treasury;

In the secondly-mentioned case, by the chancellor of the duchy, by writing under his hand attested by the clerk of the council of the duchy;

In the thirdly-mentioned case, by the duke of Cornwall or other the persons for the time being empowered to dispose for any purpose of lands of the duchy.

User of or interference with public or turnpike roads.

5. Notwithstanding anything in this act, it shall not be necessary for the promoters, before applying under this act for authority to make the railway, to enter into any contract with respect to any part of a turnpike road or public highway intended to be taken or used, or to be diverted or otherwise interfered with, for the purposes of the railway; but the board of trade, before they settle a draft of such a certificate as hereinafter provided for, shall be satisfied that due provision is made for the interests of the trustees or other persons having the management of every such road or highway, and for the safety and convenience of the public in relation thereto.

Application for Certificate.

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6. When the promoters have contracted for the purchase of all the lands required for the railway, and are desirous of obtaining a certificate under this act, they shall proceed as follows; namely,

After land contracted for, power for promoters to apply for certificate, publish notices, &c.

(1.) They shall apply to the board of trade for a certificate under this act:

(2.) They shall deposit maps, plans, sections and books of reference, and an estimate of the expense of the construction of the railway, and lodge a draft of the certificate as proposed by them, according to the general rules under this act:

(3.) They shall publish notice of the application according to such general rules.

7. As soon as conveniently may be after the time for completion of the required deposit and notice the board of trade shall proceed to inquire in such manner and to such extent as shall appear to them sufficient, whether the promoters have contracted for the purchase of all the lands required for the railway, and to inquire whether the promoters have complied with the requirements of the general rules respecting deposit and notice.

Consideration of application by Board of Trade.

8. The board of trade, before settling the draft of a certificate, shall take into consideration any representation made to them, and shall duly inquire into the merits of any objection brought before them, respecting the application.

Board of Trade to consider all representations and objections.

Opposition of Railway or Canal Company to Undertaking.

9. If in any case any railway or canal company desire to be heard by counsel, agents and witnesses against the proposed undertaking, and (within such time as is prescribed by general rules under this act) lodge at the office of the board of trade a notice in writing to that effect (hereinafter referred to as a notice of opposition) in the form set forth in the schedule to this act (with such variations as circumstances require), in that case the board of trade, if the railway or canal company lodging the notice would be affected in any way by the proposed undertaking, shall not proceed on the application of the promoters.

On railway or canal company affected giving notice of opposition, proceedings before Board of Trade to cease.

10. Where the board of trade do not proceed on the application, they shall, not later in any year than the fifteenth day of February, if parliament is then sitting, and if not, then within seven days after the next meeting of parliament, lay before both houses of parliament a copy of the draft certificate lodged by the promoters and of the notice of opposition; and the promoters shall be at liberty to seek by way of bill in the same session, in such manner and on such conditions as the houses of parliament respectively by standing order or otherwise from time to time direct, such powers as were sought by them by way of certificate.

Further proceedings to be in Parliament.

Settlement of Draft Certificate.

11. Where the board of trade proceed on the application, then on being satisfied that the promoters have contracted for the purchase of all the lands required for the railway, and have complied with the requirements of the general rules respecting deposit and notice, they may, if they think fit, settle a draft of a certificate certifying to the effect that the company, or persons therein specified, are authorized to make the railway therein described.

Power to Board of Trade to settle certificate.

12. The board of trade may (subject to the provisions of this act) insert in the draft certificate such provisions, as they, according to the circumstances of the case, deem necessary or proper for better effectuating the purposes of the certificate; and the same shall be deemed to all intents part of the certificate.

Insertion of conditions in certificate.

13. The certificate may be in the form set forth in the schedule to this act, with such provisions as aforesaid.

Form of certificate.

Submission of Draft Certificate to Houses of Parliament.

14. The board of trade shall lay the draft certificate settled by them before both houses of parliament, within seven days after the same is settled, if parliament is then sitting, and if not, then within seven days after the next meeting of parliament, but not later in any year than the first day of June.

Draft certificate to be laid before houses of Parliament.

15. On the draft certificate being settled the promoters shall give notice thereof according to general rules under this act.

Notice thereof to be given.

16. If either house of parliament, within six weeks after the draft of a certificate settled by the board of trade is laid before that house, resolves that the certificate ought not to be made, the same shall not be further proceeded with; and in that case all contracts for the purchase or taking of lands for the purposes of the undertaking shall cease to be binding on either party.

If either house resolve that certificate ought not to be made, it shall not be proceeded with.

Issue, Publication and Effect of Certificate.

17. If neither house of parliament within the period aforesaid thinks fit to resolve that the certificate ought not to be made, then as soon as the period of six weeks after the laying of the draft certificate before both houses of parliament has expired, the board of trade may make and issue a certificate in conformity with such draft.

If neither house resolve that certificate ought not to be made, Board of Trade may issue the same.

18. The certificate shall be published in the London or Edinburgh or Dublin Gazette, respectively, if the railway will be situate wholly in England or Scotland, or in Ireland;

Publication of certificate in Gazette.

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Operation of
certificate as
special act.

Judicial notice of
certificate.

Interpretation of
certificate.

Cesser of powers
at expiration of
prescribed time.

Incorporation of
lands clauses
acts in certifi-
cate, except
provisions giving
compulsory
powers, &c.

In what cases
company shall be
incorporated.

In others com-
pany may be
incorporated.

Power for Board
of Trade to in-
corporate com-
pany by certifi-
cate.

Incorporation of
Companies
Clauses Acts.

Restriction as to
issue of shares.

Restrictions on
company as to
borrowing, &c.

and shall be published both in the London and in the Edinburgh Gazette, if the railway will be situate partly in England and partly in Scotland.

19. As from the time (not being prior to such publication) in the certificate prescribed, and if none is prescribed, then as from the time of such publication, the certificate shall have the same force and operation, and shall be as absolutely valid and conclusive to all intents as if the contents thereof (taken in conjunction with this act) had been expressly enacted by parliament; and the validity of the certificate shall not be impeached on account of any alleged informality in any court or elsewhere.

20. The certificate shall be judicially noticed without being specially pleaded.

21. Terms used in the certificate shall have the same meanings as they have when used in this act.

Duration of Powers under Certificate.

22. If the company, or persons by the certificate empowered to make the railway, do not, within five years from the commencement of the operation of the certificate, or within any shorter period prescribed therein, complete the railway and open it for public traffic, then (subject to any provisions and qualifications in the certificate contained) all the powers and authorities given by the certificate shall, from and after the expiration of the time aforesaid, cease, except as to so much of the railway as is then completed.

Lands.

23. The lands clauses acts shall be incorporated with the certificate (which shall for this purpose be deemed the special act) except as may be therein excepted, and except as to the following provisions, namely,—

- (1.) With respect to the purchase and taking of lands otherwise than by agreement:
- (2.) With respect to the entry upon lands by the promoters of the undertaking:
- (3.) So much of those acts as provides for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement (but excluding from this exception so much of those acts as provides for the determination of the amount of compensation to be paid for enfranchisement of copyholds).

Incorporation of Company.

24. Where the promoters are not a company incorporated by special act, or by previous certificate under this act, and are seven or more in number, a company shall be incorporated by the certificate for the purposes thereof.

25. Where the promoters are not a company incorporated by special act, or by previous certificate under this act, and are less than seven in number, a company may be incorporated by the certificate for the purposes thereof, if the promoters so desire.

26. Where the certificate incorporates a company, it shall contain proper provisions with apt terms for creating a body corporate, by an appropriate name, with perpetual succession and a common seal, and with power to take, hold, and dispose of lands and other property, for the purposes and subject to the restrictions of the certificate, and may confer on the company power to borrow on mortgage, and all other usual or proper powers.

27. In every such case the companies clauses acts shall be incorporated with the certificate (which shall be deemed the special act).

28. It shall not be lawful for any company empowered by a certificate under this act to issue any share created under the authority of the certificate, nor shall any such share vest in the person accepting the same, unless and until a sum not being less than one-fifth part of the amount of such share is paid up in respect thereof.

29. Every company, whether incorporated by special act or by certificate, empowered by a certificate to borrow money, shall, as regards the money so authorized to be borrowed, be subject to the following restrictions, namely,—

- (1.) They shall not exercise the said powers of borrowing any money until the whole of the share capital authorized by the certificate is subscribed for or taken, and until one-half thereof is actually paid up, and until they prove to the justice who is to certify under section forty of "The Companies Clauses Consolidation Act, 1845," or (in Scotland) to the sheriff who is to certify under section forty-two of "The Companies Clauses Consolidation (Scotland) Act, 1845," as the case may be, before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one-fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares were taken in good faith, and are held by the subscribers or their assigns, those subscribers or their assigns being legally liable for the same (of which matters the certificate of the justice or sheriff shall be sufficient evidence).
- (2.) They shall not borrow a larger sum in the whole than one-third of the amount of the share capital authorized by the certificate:

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- (3.) They shall not, out of money raised under the certificate by calls or borrowing, pay interest or dividend to a shareholder on the amount of calls made on his shares, whether created under the certificate or otherwise; (but this provision shall not prevent them paying to a shareholder under the certificate such interest on money advanced by him beyond the amount of calls actually made, as is allowed by the companies clauses acts):
- (4.) They shall not, out of money so raised, pay or deposit any money that may be required to be paid or deposited in relation to any application to parliament or the board of trade:
- (5.) They shall apply every part of the money so raised only for purposes for which it is by the certificate authorized to be applied.
30. Contracts relative to the purchase or taking of lands for the railway, entered into by the promoters before the incorporation of the company by the certificate, shall be as binding on the company as if they had been entered into by the company.

Contracts by promoters binding on company.

Construction of Railway.

31. The railways clauses acts shall be incorporated with the certificate (which shall be deemed the special act), except as may be therein excepted, and except as to the following provisions, namely,—

Incorporation of Railways Clauses Acts in certificate, except as to compulsory powers, &c.

- (1.) Such of the provisions with respect to the construction of the railway and the works connected therewith as relate to the correction of errors and omissions in plans or to plans and sections of alterations:
- (2.) With respect to the temporary occupation of lands near the railway during the construction thereof:
- (3.) With respect to leasing the railway:
- and subject to the following provisions, namely,—
- (1.) Nothing herein shall confer power for the taking or using of lands for deviation or for any other purpose, otherwise than by agreement:
- (2.) Any provision referring to the datum line described in the section approved of by parliament shall be read as referring to the datum line described in the section approved of by the board of trade.

32. Where the promoters desire to make any alteration in the deposited plan or section, they may do so with the consent of the board of trade; but the board of trade shall not settle a draft of a certificate without being satisfied that all parties interested in lands liable to be affected by or in consequence of the alteration consent thereto.

Restriction on alterations of plan or section.

33. Every railway made under this act in England or Scotland shall be made on the gauge of four feet eight inches and half an inch, unless in any case the certificate prescribes the making of the railway on the gauge of seven feet or on both those gauges.

Provision respecting gauge.

Every railway made under this act in Ireland shall be made on the gauge of five feet three inches.

Provisions to secure Completion of Railway.

34. After the certificate is ready to be issued, and before the same is issued, by the board of trade, the promoters, unless they are a previously-existing company possessed of a railway open for public traffic, shall, within such time as general rules under this act direct, pay as a deposit a sum of money not less than eight per centum on the amount of their estimate of the expense of the construction of the railway, as follows, namely,—

Promoters to deposit eight per cent. on estimate in Court of Chancery, &c.

Where the railway or any part thereof will be situate in England,—into the bank of England, in the name and with the privity of the accountant general of the court of chancery in England:

Where the railway will be situate wholly in Scotland,—either into the bank of England in manner aforesaid, or (at the option of the promoters) into a bank in Scotland established by act of parliament or royal charter, in the name and with the privity of the queen's remembrancer of the court of exchequer in Scotland:

Where the railway will be situate in Ireland,—into the bank of Ireland, in the name and with the privity of the accountant general of the court of chancery in Ireland.

35. The board of trade may issue their warrant to the promoters for such payment into court, which warrant shall be a sufficient authority for the persons therein named, or the majority or survivors of them, to pay the money therein mentioned into the bank therein mentioned, in the name and with the privity of the officer therein mentioned, and for that officer to receive the same, to be placed to his account there, ex parte the railway therein mentioned, according to the method (prescribed by statute or general rules or orders of court, or otherwise) for the time being in force respecting the payment of money into the said courts respectively, and without fee or reward.

Warrant of Board of Trade for payment into court.

36. Provided, that in lieu, wholly or in part, of the payment of money, the promoters may bring into court as a deposit an equivalent sum of bank annuities, or of any stocks, funds or securities on which cash under the control of the respective court is for the time being permitted to be invested, or of exchequer bills (the value thereof being taken at the price at which the promoters originally purchased the same, as appearing by the broker's certificate of that purchase); and in that case the board of trade shall vary their warrant accordingly.

Liberty for promoters to bring in exchequer bills, &c.

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Provision for
vacations in
offices of courts.

Power for court
to direct invest-
ment.

Interpretation of
"deposit fund"
and "depositors"
in following
provisions.

Repayment of
deposit on com-
pletion of railway
or on terms.

Forfeiture of
deposit on non-
completion of
railway, &c.

Application of
money recovered
on bond.

Depositors to
receive dividends
accruing while
fund in court.

Proof as to capi-
tal and expendi-
ture, execution of
bond, &c.

Protection to
Board of Trade
in case of error,
&c.

Mode of applica-
tion to courts.

37. At any time when the office of the accountant general of the court of chancery in England or Ireland is closed, a deposit under this act may nevertheless be made, in such manner as general orders of the respective courts authorize and direct.

38. Where money is so paid into the court of chancery in England or Ireland, the court may, on the application of the persons named in the warrant of the board of trade, or of the majority or survivors of them, order that the same be invested in such stocks, funds or securities as the applicants desire and the court thinks fit.

39. In the subsequent provisions of this act, the term "the deposit fund" means the money deposited, or the stocks, funds or securities in which the same is invested, or the bank annuities, stocks, funds, securities or exchequer bills deposited, as the case may be; and the term "the depositors" means the persons named in the warrant of the board of trade authorizing the deposit, or the majority or survivors of those persons, their executors, administrators or assigns.

40. The court in which the deposit is made shall, on the application of the depositors, order the deposit fund to be paid, transferred or delivered out to the applicants, or as they direct, in any of the following events, namely,—

- (1.) If, within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, the company, or persons thereby empowered to make the railway, complete it and open it for public traffic; or
- (2.) If, within the same time, they (being a company) prove to the satisfaction of the board of trade that one-half of their nominal capital authorized by the certificate is paid up, and that they have expended a like amount for the purposes of the certificate; or
- (3.) If, at any time after the issuing of the certificate, they execute and deliver to the solicitor of her majesty's treasury a bond with a surety or sureties (such bond being prepared to the satisfaction of, and such surety or sureties being approved by, the said solicitor) in a penal sum of twice the amount of the money required to be deposited, conditioned to the effect following, namely,—for payment to her majesty, her heirs or successors, of the amount of the money required to be deposited, if the company or persons empowered by the certificate do not, within the time aforesaid, either complete the railway and open it for public traffic, or (being a company) give such proof as aforesaid respecting their capital and expenditure.

41. If the company, or persons empowered by the certificate to make the railway do not, within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, do one or other of the following things, namely,—

- (1.) Complete the railway and open it for public traffic; or
- (2.) Give (being a company) such proof as hereinbefore mentioned respecting their capital and expenditure; or
- (3.) Execute and deliver such a bond as is hereinbefore described,—

then and in every such case the deposit fund shall, from and after the expiration of the time aforesaid, be forfeited to her majesty, and shall accordingly be paid, transferred or delivered out to or for the account of her majesty's exchequer, in such manner as the court in which the deposit is made thinks fit to order, on the application of the solicitor of her majesty's treasury, on notice to such parties (if any) as the court thinks fit; and the deposit fund, when so paid, transferred or delivered, or the proceeds thereof, shall be carried to and form part of the consolidated fund of the united kingdom.

42. Where any such bond as aforesaid is given, the amount recovered thereon shall be paid to the account of her majesty's exchequer, and shall be carried to and form part of the said consolidated fund.

43. The depositors shall be entitled to receive payment of the interest or dividends from time to time accruing on the deposit fund while in court; and the court in which the deposit is made may from time to time, on the application of the depositors, make such order as seems fit respecting the payment of the interest or dividends accordingly.

44. The certificate of the board of trade that such proof as aforesaid respecting the capital and expenditure of any company has been given to the satisfaction of the board of trade, and the certificate of the solicitor of her majesty's treasury that such bond as aforesaid has in any case been prepared, executed and delivered to his satisfaction, shall respectively be sufficient evidence of the matters therein certified.

45. The issuing in any case of any warrant or certificate relating to deposit or to the deposit fund, or any error in any such warrant or certificate or in relation thereto, shall not make the board of trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the deposit fund, or the interest of or dividends on the same, or any part thereof respectively.

46. Any application under this act to the court of chancery in England or Ireland shall be made in a summary way in such manner as general orders of those courts respectively direct.

47. The lord chancellor of Great Britain with the advice and assistance of the lords justices of the court of appeal in chancery and the master of the rolls and the vice-chancellors, or any two of those judges, and the lord chancellor of Ireland with the advice and assistance of the lord justice of the court of appeal in chancery in Ireland and of the master of the rolls in Ireland, may respectively from time to time make such general orders as seem fit for the regulation of the practice under this act of the court of chancery in England and Ireland respectively.

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Power to courts to make general orders.

48. Where a certificate is obtained by a previously-existing company possessed of a railway open for public traffic, then, if the company fail to complete the railway and open it for public traffic within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, the company shall be liable to a penalty of not less than twenty pounds and not exceeding fifty pounds for every day during which such failure continues, except only in respect of any time during which it appears from a certificate of the board of trade that the company were prevented from completing the railway or opening it for public traffic by unforeseen accident or circumstances beyond their control, but the want of sufficient funds shall not be deemed a circumstance beyond their control within the meaning of this provision.

Penalty on company failing to open new railway in certain cases.

Tolls and Charges for Use of Railway.

49. The proprietors of the railway may demand and take, in respect of the railway, tolls and charges not exceeding the sums specified in the schedule to this act, subject and according to the regulations therein specified.

Tolls, &c. in schedule.

50. The board of trade may nevertheless by the certificate vary the tolls and charges and regulations specified in the schedule to this act, or any of them, if in any case it seems to them necessary or proper under the circumstances to do so.

Power for Board of Trade to vary tolls, &c.

Application of General Railway Acts.

51. The enactments described in the schedule to this act, and any enactments amending, perpetuating or otherwise affecting any of them, so far as the same are in force at the passing of this act, shall extend and apply, as the case may require, to the railway, and to the company or persons empowered by the certificate to make the railway, and shall in all respects operate in relation thereto respectively as if they were expressly repeated and re-enacted in this act, subject, nevertheless, and according to the following variations and provisions; namely,

Enactments in schedule applied to the railway and company, subject to variations.

- (1.) For the purposes and within the meaning of any of those enactments, the railway shall be deemed to be a railway made and constructed and carried on under the authority of parliament and under the powers and provisions of an act of parliament, and the certificate (taken in conjunction with this act) shall be deemed to be a special act of parliament regulating or relating to the railway or the company, body or persons empowered to make the same (as the case may require):
- (2.) Such of those enactments as refer to the time of the passing of an act of parliament for the construction of a railway, or to the last day of the session in which such an act is passed, shall respectively be read and have effect as referring to the time of the commencement of the operation of the certificate:
- (3.) The terms "company" and "railway company" used in any of those enactments shall respectively include any persons empowered by the certificate to make the railway:
- (4.) Such of those enactments as refer to the directors or any director, or the secretary, chief or other clerk, accountant, treasurer or other officer of a company, shall extend and apply to every or any one of the persons (not being a company) empowered by the certificate to make the railway:
- (5.) Such of those enactments as refer to a writing under the common seal of the company shall be read and have effect as referring to a writing under the hand and seal of any one of such persons, as aforesaid:
- (6.) Such of those enactments, as impose any penalty or forfeiture, or any pecuniary liability or any obligation on a company, or give any right, remedy or process against a company, shall be read and have effect (so far as the nature and circumstances of the case admit) as imposing a like penalty, forfeiture, liability or obligation on, or as giving a like right, remedy or process against, every or any one of such persons as aforesaid, but not so as to authorize the recovery of any penalty or forfeiture from, or the enforcement of any pecuniary liability against, more than one of such persons in respect of the same offence, matter or thing:
- (7.) The amount of any compensation to be made to the owners and occupiers of any lands for loss or injury or inconvenience sustained by them respectively by reason of any works done under the authority of any of those enactments shall, in case of dispute, be settled in manner directed by the lands clauses acts and the railways clauses acts as respectively applicable to the case:
- (8.) Such of those enactments as provide for the case of the board of trade certifying that the public safety requires additional land to be taken by a company for the purpose of giving increased width to the embankments or inclination to the

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slopes of the railway, or for making approaches to bridges or archways, or for doing works for the repair or prevention of accidents or slips happening or apprehended to the cuttings, embankments or other works of the railway, shall be read and have effect, as regards such portions of land as are mentioned in any certificate so given by the board of trade, as if compulsory powers of purchasing and taking lands had been contained in the certificate under this act authorizing the making of the railway, and the provisions of the lands clauses acts and the railways clauses acts relative to the compulsory purchase or taking of land had been incorporated with that certificate:

- (9.) If the railway is in any respect constructed contrary to the provisions of the certificate, or of this act, it shall be deemed to be constructed contrary to the provisions of any of those enactments applicable in the case:
- (10.) Nothing herein shall extend or make applicable, for the purposes of this act, to or in any one of the parts of the united kingdom, any of those enactments not in force there independently of this act.

Miscellaneous.

Board of Trade may reject the application.

52. Nothing in this act shall make it obligatory on the board of trade to settle a draft of a certificate in any case if it appears to the board of trade for any reason that the application of the promoters should not be complied with; and in case the board of trade reject any application, all contracts for the purchase or taking of lands for the purposes of the undertaking shall cease to be binding on either party.

Saving for general acts, or revision of charges.

53. Nothing in the certificate shall exempt the railway or the company, or persons to whom it belongs, from the provisions of any general act of parliament relating to railways, or to the better audit of the accounts of railway companies, passed before or after the issuing of the certificate, or from any revision and alteration under the authority of parliament, of the maximum tolls and charges allowed to be taken under the certificate.

New works in connexion with railway.

54. All the provisions of this act which relate to the making of a railway shall extend and apply, mutatis mutandis, to the making or executing of any work connected with or for the purposes of a railway (as distinguished from the construction of a railway).

Power to authorize joint work.

55. Subject and according to the provisions of this act, the board of trade may, on a joint application or on two or more separate applications, issue a certificate empowering two or more companies or persons respectively to jointly make or execute the whole, or to separately make or execute parts, of a work connected with or for the purposes of a railway, and to jointly or separately use the whole or parts thereof; and all the provisions of this act which relate to the making of a railway, or the making or executing of a work, shall extend and apply to the making or executing of the whole and the separate parts of such work as last aforesaid; and the form of the certificate may be adapted to the circumstances of the case.

Power to promoters, being a company, to raise additional capital.

56. Where the certificate is obtained by a previously-existing company incorporated by special act or by certificate, the certificate may authorize the company to raise, as capital, for the purposes of the certificate, such additional sum of money as therein limited, by the issue of new shares or new stock, either ordinary or preference, or partly ordinary and partly preference, or partly in that mode and partly by borrowing on mortgage, at the option of the company, or as may be prescribed in the certificate, and with power to create and issue debenture stock.

In every such case the companies clauses acts shall be incorporated with the certificate.

In every such case the restrictions by this act imposed on a company when originally incorporated by certificate, with respect to the exercise of their borrowing power and to the application of money raised under the certificate by calls or borrowing, shall extend and apply to such previously-existing company in respect of such additional capital.

Where promoters are a company, approval of application by a meeting.

57. Where the certificate is obtained by a previously-existing company incorporated by special act or by certificate, it shall be the duty of the board of trade not to settle a draft of the certificate without being satisfied that the members of the company have approved of the application to the board of trade, in like manner as, under the standing orders of either house of parliament for the time being in force, their approval of a railway bill would be required to be given in the same case.

Power to Board of Trade to amend or revoke certificate.

58. Subject and according to the restrictions and provisions of this act, the board of trade, on the application of any company or persons empowered by a certificate, may from time to time amend, extend or vary by certificate the previous certificate, and may by certificate revoke the previous certificate.

Power to correct error.

59. If in any case it is made to appear to the board of trade that any error has been committed in a certificate or in relation thereto, the board of trade may, subject and according to the restrictions and provisions of this act, on the application of any company, body or person affected by the error, and on notice to the company or persons empowered by the certificate, correct the error by a further certificate.

Proof of certificate.

60. A copy of the London, Edinburgh or Dublin Gazette containing a certificate or a copy of a certificate, purporting to be printed by the printers of the London, Edinburgh or Dublin Gazette, shall be conclusive evidence of the certificate, and of the due publica-

tion thereof, without any proof of the Gazette, or without any proof of the copy having been in fact so printed, as the case may be.

61. The company or persons empowered by a certificate shall at all times keep at their head office copies of the certificate printed by the printers of the Gazette or one of the Gazettes in which the same was published, in such form as general rules under this act direct, to be sold to all persons desiring to buy the same, at a price not exceeding one shilling for each copy.

If any company or persons fail to comply with this provision they shall be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which such failure continues after the first penalty is incurred.

62. Penalties under this act or under a certificate, the recovery and application whereof are not otherwise provided for, shall be recovered and applied as penalties under the railways clauses acts (a) are recoverable and applicable.

63. The act of the session of the seventh year of king William the fourth, and the first year of her majesty (chapter eighty-three), "to compel clerks of the peace and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either house of parliament," shall apply to documents required to be deposited by general rules under this act.

64. The general rules under this act shall in the first instance be those set forth in the schedule to this act; and the board of trade may from time to time, for the better execution of this act, make general rules adding to, altering or revoking any general rules for the time being in force under this act; but any general rules so made by the board of trade shall not have effect unless and until they are laid before both houses of parliament, and if either house of parliament, within six weeks after the same are laid before that house, thinks fit to resolve that the same or any part thereof ought not to take effect, the same or that part thereof (as the case may be) shall not take effect; otherwise all rules made by the board of trade under the present section shall be of the same force and effect as if they had been comprised in the schedule to this act.

All general rules which are to take effect under the present section shall be published in the London, Edinburgh and Dublin Gazettes.

65. Not later than the first day of July in each year the board of trade shall lay before both houses of parliament a report respecting the applications to and proceedings of the board of trade under this act during the year then last past.

APPENDIX.

Copies of certificate for sale.

Recovery and application of penalties.

As to custody of documents under 7 Will. 4 and 1 Vict. c. 83, ante, p. 1.

General rules in schedule with power for amendment.

Annual report to Parliament by Board of Trade.

The SCHEDULE referred to in the foregoing act.

(i.)—Notice of Opposition.

In the matter of "The Railways Construction Facilities Act, 1864," and
The (proposed) railway.

We, the railway [or canal] company hereby declare and give notice that we desire to be heard by counsel, agents and witnesses against the above-mentioned proposed undertaking.

Dated this day of , 18 .

Witness, A. B.

(L.S.)

(ii.)—Form of Certificate of Board of Trade.

The railway.
Certificate of the board of trade for the construction of the
railway.

Whereas the promoters of the railway have contracted for the purchase of the lands required for the railway and the works connected therewith, and have complied with the requirements of "The Railways Construction Facilities Act, 1864:"

Now, therefore, the board of trade do, by this their certificate, in pursuance of the said act, and by virtue and in exercise of the powers thereby in them vested, and of every other power enabling them in this behalf, certify as follows:

[Here are to follow the provisions of the certificate, showing the powers conferred and the terms and conditions (if any) imposed.]

The Board of Trade,
Whitehall,

(Signed) C. D.
Secretary to the Board of Trade.

Dated this day of .

(a) 8 & 9 Vict. c. 20, s. 140, ante, p. 98.

APPENDIX.

(iii.)—Tolls and Charges.

TABLE I.

Maximum Charges for Use of Railway and Supply of Carriages, Waggon, or Trucks.

	For Use of Railway, per Mile.	For Supply of Carriage, Waggon, or Truck by the Proprietors of the Railway, the additional Sum per Mile of
Passengers:—		
For every Person	Twopence.	One Penny.
Animals:—		
For every Horse, Ass, Mule or other Beast of Draught or Burden (Class 1)	Threepence.	One Penny.
For every Ox, Cow, Bull or Head of Neat Cattle (Class 2)	Twopence.	One Penny.
For every Calf, Pig, Sheep, Lamb and other small Animal (Class 3)	Three Farthings.	One Farthing.
Goods (except as provided for in Table IV.):—		
For Cotton and other Wools, Manufactured Goods, Drugs, Fish and all other Wares, Merchandise, Articles, Matters or Things not enumerated in any other Class (Class 4) per Ton	Threepence.	One Penny.
For Sugar, Grain, Corn, Flour, Hides, Dyewoods, Earthenware, Timber, Staves, Deals and Metals (except Iron), Nails, Anvils, Vices, Chains and Light Iron Castings (Class 5) per Ton	Twopence Halfpenny.	One Penny.
For Coke, Charcoal, Pig Iron, Bar Iron, Rod Iron, Sheet Iron, Hoop Iron, Plates of Iron, Wrought Iron, Heavy Iron Castings, Railway Chains, Slabs, Billets and Rolled Iron, Lime, Bricks, Tiles, Slates, Salt, Fireclay and Stone (Class 6) per Ton	Three Halfpence.	One Penny.
For Dung, Compost, Manure, undressed Material for Repair of Public Roads or Highways, Coals, Culm, Cinders, Cannel, Ironstone, Iron Ore, Limestone, Clay (except Fireclay), Chalk, Sand and Slag (Class 7) per Ton	Five Farthings.	One Halfpenny.
For every Carriage of whatever Description conveyed on a Truck or Platform belonging to the Proprietors of the Railway (Class 8):		
If not weighing more than One Ton	Sixpence.	
If weighing more than One Ton, then for the first Ton	Sixpence.	
And for every additional Quarter of a Ton, or fractional Part of a Quarter of a Ton, above the first Ton	Three Halfpence.	

TABLE II.

Maximum Charges for Supply of Locomotive Power.

For the Use of Engines for propelling Carriages on the Railway:

For every Passenger, Animal and Ton of Goods per Mile One Penny.

TABLE III.

Maximum total Charges for Use of Railway and Supply of Carriages, Waggon, or Trucks, and Supply of Locomotive Power, and every other Expense incidental to Conveyance of Passengers, Animals or Goods along the Railway.

	Per Mile.
Passengers:—	
For every Person conveyed in a First-class Carriage	Threepence.
" " Second-class "	Twopence.
" " Third-class "	Five Farthings.
Animals:—	
For every Animal in Class 1	Fourpence.
" Class 2	Threepence.
" Class 3	Three Halfpence.

Goods:—						Per Mile.	APPENDIX.
For every Thing in Class 4	..	..	..	..	per Ton	Fourpence.	—
„ Class 5	..	..	..	..	per Ton	Threepence.	
„ Class 6	..	..	..	..	per Ton	Twopence.	
„ Class 7	..	..	..	..	per Ton	Three Halfpence.	
For every Carriage in Class 8	..	..	..	..	..	The Charge specified in Table I.	

TABLE IV.

Maximum Charges for small Packages and single Articles of great Weight.

Small Packages:—

For every Parcel not exceeding Seven Pounds in Weight	..	..	..	..	..	Sixpence.
„ exceeding Seven Pounds, but not exceeding Fourteen Pounds, in Weight	..	..	..	..	..	Eightpence.
For every parcel exceeding Fourteen Pounds, but not exceeding Twenty-eight Pounds, in Weight	..	..	..	..	..	One Shilling.
„ exceeding Twenty-eight Pounds, but not exceeding Fifty-six Pounds, in Weight	..	..	..	..	..	One Shilling & Threepence.
„ exceeding Fifty-six pounds, but not exceeding Five hundred Pounds, in Weight, for the first Fifty-six Pounds	..	..	..	..	..	One Shilling.
And for every additional Fifty-six Pounds, or fractional Part of Fifty-six Pounds, above the first Fifty-six Pounds	..	..	..	..	..	Sixpence.

Single Articles of great Weight:—

For every Boiler, Cylinder or Single Piece of Machinery, Timber or Stone, or other Single Article:

If weighing (inclusive of the Carriage) more than Four but not more than Eight tons, Sixpence per Ton per Mile.

If weighing (inclusive of the Carriage) more than Eight Tons, such Sum as the Proprietors of the Railway think fit.

REGULATIONS.

1. For passengers, animals or goods conveyed on the railway for a distance less than that prescribed in the certificate as the short distance, and if none is prescribed then for a distance less than six miles, charges are to be payable as for the short distance prescribed, and if none is prescribed then as for six miles. Short distance charge.
 2. In respect of passengers, every fraction of a mile beyond an integral number of miles is to be deemed a mile. Fraction of mile ; passengers.
 3. In respect of animals and goods, for a fraction of a mile beyond the short distance prescribed, or if none is prescribed then beyond six miles, or beyond any greater number of miles, charges are to be payable in proportion to the number of quarters of a mile contained in that fraction ; and a fraction of a quarter of a mile is to be deemed a quarter of a mile. Fraction of mile ; animals and goods.
 4. For a fraction of a ton charges are to be payable according to the number of quarters of a ton in that fraction ; and a fraction of a quarter of a ton is to be deemed a quarter of a ton. Fraction of ton.
 5. Every passenger travelling on the railway may, without charge, cause to be carried in the same train with him his ordinary luggage, not exceeding the weight prescribed in the certificate, and if none is prescribed then not exceeding the weight of one hundred and twenty pounds for a first-class passenger, one hundred pounds for a second-class passenger, and sixty pounds for a third-class passenger. Passengers' luggage.
 6. The restriction as to charges for passengers does not extend to special trains when required by passengers, but applies only to the ordinary or express passenger or goods trains appointed by the proprietors of the railway. Special trains.
 7. Except as to stone and timber, weight is to be determined according to avoirdupois weight. Determination of weight.
- Fourteen cubic feet of stone, and forty cubic feet of oak, mahogany, teak, beech or ash and fifty cubic feet of any other timber, are to be deemed one ton, and so in proportion for any smaller quantity,
8. In addition to the charges in Table III., a reasonable charge is to be payable for the loading, covering and unloading of goods at any station, being a terminal station in respect of such goods, and for delivery and collection, and any other services incidental to the duty or business of a carrier, where such services, or any of them, are or is performed by the proprietors of the railway. Terminal station charges.
- A station is not to be considered a terminal station in respect of goods, unless they are received there direct from the consignor, or are directed to be delivered there to the consignee.

APPENDIX.
—
Small packages.
Agreement for
higher charges.

9. The term small packages does not include articles sent in large aggregate quantities, although made up of separate parcels, such as bags of sugar, coffee, meal, and the like; but applies only to single parcels in separate packages.

10. Nothing herein or in the certificate contained is to prevent the proprietors of the railway from taking any charge over and above the charges hereinbefore limited for the conveyance of goods of any description by agreement with the owners of or any persons in charge of such goods, either in respect of the conveyance thereof (except small packages) by passenger trains, or by reason of any other special service performed by the proprietors of the railway in relation thereto.

(iv.) *Enactments in General Acts relating to Railways applied to Railways under this Act.*

Session and Chapter, and Section (if any).	Title or Short Title of Act.
1 & 2 Vict. c. 80 (a)	An Act for the Payment of Constables for keeping the Peace near Public Works.
1 & 2 Vict. c. 98 (b)	An Act to provide for the Conveyance of the Mails by Railways.
2 & 3 Vict. c. 45 (c)	An Act to amend an Act of the Fifth and Sixth Years of the Reign of His late Majesty King William the Fourth relating to Highways.
3 & 4 Vict. c. 97 (d)	An Act for regulating Railways.
5 & 6 Vict. c. 55 (e)	An Act for the better Regulation of Railways, and for the Conveyance of Troops.
5 & 6 Vict. c. 79, ss. 2 to 7 (both inclusive), and ss. 24, 25, 26 (f).	An Act to repeal the Duties payable on Stage Carriages, and on Passengers conveyed upon Railways, and certain other Stamp Duties in Great Britain, and to grant other Duties in lieu thereof; and also to amend the Laws relating to Stamp Duties.
7 & 8 Vict. c. 85 (g)	An Act to attach certain Conditions to the Construction of future Railways authorized or to be authorized by any Act of the present or succeeding Sessions of Parliament, and for other Purposes relating to Railways.
8 & 9 Vict. c. 3	An Act for the Appointment of Constables or other Officers for keeping the Peace near Public Works in Scotland.
8 & 9 Vict. c. 46 (h)	An Act for the Appointment of additional Constables for keeping the Peace near Public Works in Ireland.
9 & 10 Vict. c. 57, ss. 4, 6, 7, 8 (i)	An Act for regulating the Gauge of Railways.
10 & 11 Vict. c. 85, s. 16 (j) ..	An Act for giving further Facilities for the Transmission of Letters by Post, and for the regulating the Duties of Postage thereon, and for other Purposes relating to the Post Office.
14 & 15 Vict. c. 64 (k)	An Act to repeal the Act for constituting Commissioners of Railways.
17 & 18 Vict. c. 31 (l)	The Railway and Canal Traffic Act, 1854.
18 & 19 Vict. c. 122, s. 6 (m) ..	An Act to amend the Laws relating to the Construction of Buildings in the Metropolis and its Neighbourhood.
20 & 21 Vict. c. 31, s. 4 (n) ..	An Act to amend and explain the Inclosure Acts.
21 & 22 Vict. c. 75 (o)	An Act to amend the Laws relating to Cheap Trains, and to restrain the Exercise of certain Powers by Canal Companies, being also Railway Companies.
22 & 23 Vict. c. 59 (p)	Railway Companies Arbitration Act, 1859.
26 & 27 Vict. c. 33, ss. 13, 14 (q)	An Act for granting to Her Majesty certain Duties of Inland Revenue, and to amend the Laws relating to the Inland Revenue.
26 & 27 Vict. c. 112, s. 32 (r) ..	The Telegraph Act, 1863.

(a) Ante, p. 75, note (s).
(b) Ante, p. 2.
(c) Ante, p. 6.
(d) Ante, p. 7.
(e) Ante, p. 10.
(f) Ante, p. 15.
(g) Ante, p. 18.
(h) Ante, p. 101.
(i) Ante, p. 106.

(j) Ante, p. 111.
(k) Ante, p. 127.
(l) Ante, p. 134.
(m) Ante, p. 137.
(n) Ibid.
(o) Ante, p. 138.
(p) Ante, p. 139.
(q) Ante, p. 215.
(r) Ante, text, 48Q.

(v.)—GENERAL RULES.

Form of Application.

1. The application to the board of trade for a certificate is to be made by a memorial in writing, signed by the promoters or some or one of them, and lodged at the office of the board of trade.

2. Together with the memorial the promoters are to lodge—

(a) A printed draft of the certificate as proposed by the promoters:

(b) An estimate of the expense of the construction of the proposed new railway or work (if any), signed by the person making the estimate.

Plans, Sections, &c.

3. Maps, plans, sections and books of reference deposited by the promoters are to be such, in respect of scale and contents and otherwise, as, under the standing orders of either house of parliament for the time being in force, they would be obliged to deposit if they were proceeding in the same case by a railway bill.

4. The maps, plans, sections, and books of reference aforesaid are to be deposited at the office of the board of trade at the time when the memorial is lodged there.

5. They are also to be deposited for public inspection at the same offices of the clerks of the peace or sheriff clerks, at which, under the standing orders aforesaid, the promoters would be obliged to deposit them if they were proceeding in the same case by a railway bill.

6. Where any part of the railway will be situate within the limits of the metropolis, as defined by "The Metropolis Management Act, 1855," a copy of so much of the plans and sections as relates to that part is to be deposited at the office of the metropolitan board of works.

7. A copy of so much of the plans and sections as relates to each parish in which any part of the railway will be situate, or in which any lands intended to be taken for the railway are situate, together with a copy of so much of the book of reference as relates to that parish, is to be deposited for public inspection with the officer or person with whom, under the standing orders aforesaid, the promoters would be obliged to deposit the same if they were proceeding in the same case by a railway bill.

Advertisements as to Application.

8. After all the deposits aforesaid have been made, notice of the application to the board of trade is to be given by advertisement published as follows, namely:

Where the railway will be situate wholly in one county, city, or town, or county of a city or town, then once in each of three successive weeks in some one and the same newspaper of that county, city or town, or county of a city or town:

Where the railway will not be situate wholly in one county, city or town, or county of a city or town, then once in each of three successive weeks in some one and the same newspaper of the county, city or town, or county of a city or town, wherein the head office of the promoters is situate, and also once in each of three successive weeks in some one and the same newspaper of each county, city or town, or county of a city or town, wherein any part of the railway will be situate:

If in any case there is not any such newspaper as hereinbefore described, then in like manner in a newspaper of some adjoining or neighbouring county:

In every case, once at least in the London, Edinburgh, or Dublin Gazette, respectively, if the railway will be situate wholly in England or Scotland, or in Ireland; and both in the London and in the Edinburgh Gazette, if the railway will be situate partly in England and partly in Scotland.

9. The advertisements are to be published either in the month of June or in the month of November and not at any other time.

10. Each advertisement is to give the address of an office in London where copies of the draft certificate will be supplied as hereinafter directed.

11. Each advertisement is to state that all persons desirous of making any representation to the board of trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the secretary of the board of trade, on or before the first day of August or first day of January next succeeding the date of the advertisement, according as the same is published in the month of June or in the month of November.

Deposit of Copies of Advertisements.

12. Within one week after the publication of the latest advertisement, a copy of each of the newspapers and Gazettes containing the several advertisements is to be lodged at the office of the board of trade.

13. Within the same time, a printed copy of the Gazette advertisement is to be deposited for public inspection in each of the same offices, and with each of the same officers and persons, in which or with whom the maps, plans, sections and books of reference or parts thereof were deposited.

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14. The last-mentioned deposit of a copy of the Gazette advertisement may be made (if the promoters choose) by means of a registered post letter, and any deposit so made shall be deemed made on the day on which such letter would be delivered in ordinary course of post.

Note of Time of Deposit.

15. Where any document is deposited under these rules for public inspection, the clerk of the peace, sheriff clerk, or other officer or person, in whose office or with whom it is deposited, is to make thereon a memorial in writing denoting the time at which it was deposited.

Notice to Road Trustees.

16. Where any part of a turnpike road or public highway is intended to be taken or used, or to be diverted or otherwise interfered with, for the purposes of the railway, the promoters in the month of June or November (as the case may be) in which the advertisements are published are to serve notice of the application on the trustees or other persons having the management of such road or highway.

Notice of Opposition.

17. Notice of opposition by a railway or canal company is to be lodged at the office of the board of trade, not later than the first day of August or first day of January next succeeding the date of the advertisement of application, according as the same is published in the month of June or in the month of November.

Notice of Settlement of Draft Certificate.

18. On the draft certificate being settled by the board of trade, the promoters are to serve a copy thereof, with a notice that the draft has been settled by the board of trade, on every company, body, or person, by whom any representation or objection respecting the application was made to or brought before the board of trade, and are also to give by advertisement or otherwise such public or other notice (if any) thereof, as according to the circumstances of the case the board of trade direct.

Supply of Copies of Draft Certificate.

19. From the time of the publication of the first advertisement the promoters are to keep in the office mentioned in this behalf in the advertisement, a sufficient number of copies of the draft of the certificate as proposed by them, and are to furnish there copies to all persons applying for them at the price of not more than sixpence each.

20. From the time of the settlement of the draft certificate by the board of trade, the promoters are to keep in the office aforesaid copies of the draft supplied to them for that purpose by the board of trade, and are to furnish there copies thereof to all persons applying for them at such price (if any) as the board of trade from time to time direct.

Deposit of Money.

21. The deposit of money or government securities in court is to be made within one month after notice from the board of trade that they are prepared to issue the certificate.

Printing of Certificate.

22. Copies of the certificate printed by the printers of a Gazette are to be printed on ordinary white folio paper, similar in size to the paper on which the public general acts of parliament are printed for public sale.

REPORT of the Select Committee appointed to continue the Inquiry commenced last Session, and report as to what legislative Measures are desirable for the purpose of restraining Directors of Railway Companies from exceeding the Limits fixed by their Acts of Parliament, and from evading those Provisions of their Acts of Parliament which require that a certain Portion of their authorized Capital shall be subscribed and paid up before their borrowing Powers can come into Operation, and also to inquire and report what Securities can be given to the Holders of Debentures as to the Validity and Legality of the Issue of such Bonds. [21st July, 1864.]

1. The committee having examined witnesses, and considered the subject referred to them, are of opinion that a compulsory registration of debentures and debenture stock will afford means whereby the directors of railway companies may be restrained from exceeding the amount of their statutory borrowing powers.

2. It is the custom of Parliament, when granting to railway companies the powers necessary for carrying out their undertakings, to limit the amount of money they should

be permitted to borrow, and to prescribe the conditions under which such borrowing powers should be exercised; and it is evidently the intention of the legislature that no bonds or other negotiable securities, other than those created under such limited and conditional powers, should be issued by the directors of railway companies.

3. This intention is, however, easily and commonly defeated by the issue of obligations (purporting to be for work done, or materials supplied for the purposes of the undertaking), commonly called Lloyd's bonds. The holders of these obligations can sue upon them and recover judgment against the companies; and success in any conflict for priority of claim between them and the holders of statutory debentures, would appear, from evidence given before the committee, to be only a question of more or less diligence.

4. The directors of some railway companies are in the habit of issuing securities of this description without consulting their shareholders, and without the knowledge or consent of the statutory debenture holders; and the gross amount of them which may be outstanding against a company is unlimited.

5. The committee are of opinion that holders of statutory debentures, duly registered as above recommended, should have a right to recover and secure the payment of all principal and interest due to them by the appointment of a receiver, in priority to the holders of Lloyd's bonds, or of any other obligations or acknowledgment of indebtedness not issued under the authority of Parliament.

6. Such an arrangement may, however, be defeated, or at all events materially interfered with, if a creditor is allowed to seize the stock of the company, and thereby stop the traffic on the line and the income derived therefrom. The property is of a different character to other property. The public have a right to the use of the railway, and would be seriously inconvenienced by the stoppage of even a short line. It appears, therefore, to the committee that this power ought not to be allowed to the creditors of railway companies.

7. The committee see no reason why railway companies should continue altogether free from the adjusting process to which other trading companies are liable through proceedings in bankruptcy. On the contrary, they are of opinion that the present practice, by which the affairs of companies practically bankrupt are patched up by successive acts of Parliament is injurious to the public, and too frequently of no real benefit to the shareholders. When a company pays little or no dividend on the original capital, the working expenses are often cut down injuriously, danger arises from insufficient service, and the risk of present loss attending any reduction of fares, even with the fairest expectation of future profit, is a bar to liberality of management. For the public advantage it is desirable that a railway should yield reasonable returns to those under whose control it is placed; and when a company becomes seriously embarrassed it is expedient that the concern should be transferred to others under whose management it may be efficiently conducted. The knowledge that such must be the result of mismanagement would probably have a most beneficial effect on the proceedings of directors, and subject the credit which they would be able to obtain to some useful restraint. With the present facilities for forming companies there would be no difficulty in finding purchasers under sound and just regulations to be provided in a public act, whereby Parliament would be relieved from having to deal with a class of private bills which are very troublesome to settle and are never of a satisfactory character. The rights of the holders of statutory securities, including the regular payment of their dividends, should of course be carefully secured throughout all the proceedings.

8. As an example of the extent to which some railway directors are disposed to infringe the restrictions and conditions of their acts of Parliament, the committee would call the attention of the House to the evidence given before a committee of the House of Commons during this session in the case of the Tewkesbury and Malvern Railway Bill.

The evidence will be found in the appendix to the report.

—◆—

LETTERS and CIRCULAR issued by the BOARD of TRADE after receipt of the First Notice of Intention to open a New Railway (a).

Railway Department, Board of Trade,
Whitehall, S.W.

Sir,—I have been directed by the Lords of the Committee of Privy Council for Trade to acknowledge the receipt of your letter of the _____ giving the first notice required by the 4th section of the 5th & 6th Victoria, cap. 55, of the intention of the Railway Company to open the line of railway named in the margin for public traffic.

My lords direct me to point out to the directors of the company that under the provisions of the 4th, 5th and 6th sections of the before-mentioned general act 5 & 6 Victoria, cap. 55, a further notice in writing must be given to their lordships of the day when the line of railway will be in the opinion of the company sufficiently completed for the safe

(a) Ante, text, 439.

APPENDIX.
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LETTER
and
CIRCULAR.

conveyance of passengers and ready for inspection, and that the railway must not be opened for the public conveyance of passengers until the expiration of ten days after the day specified in such notice as that upon which the railway will be sufficiently completed for the safe conveyance of passengers and ready for inspection, unless the opening within such ten days shall have been previously authorized by their lordships.

When this further or second notice shall have been received, my lords will appoint an officer to inspect the line referred to upon the earliest convenient day within the ten days after the day specified in the notice.

My lords direct me to forward to you by this post a statement of the details with which the inspecting officer will desire to be furnished previously to making his inspection, and which should be forwarded to this department before the second notice above mentioned is given. The statement also contains certain regulations which my lords are desirous should be adopted in the case of single lines of railway.

The Secretary of the
Railway Company.

I have the honour to be, Sir,
Your obedient servant,

Railway Department, Board of Trade,
Whitehall, S.W.

Sir,—With reference to the proposed opening of the
I have to request that, previously to the second or ten days' notice required by the 4th section of the 5 & 6 Vict. c. 55 (b), you will be so good as to forward to this department the several documents named in the annexed list, marked A.; and as they will become official records of the line and works inspected, it is requested that each document may be signed by the engineer, or by some other responsible officer of the company whose duty makes him acquainted with its contents.

As inconvenience has frequently been experienced from the opening of new lines of railway having been postponed by the inspecting officers of this department, in consequence of the lines being incomplete in certain particulars, it has been deemed advisable to transmit, at the same time, a statement, marked B., of some of those requirements in which deficiencies have occurred.

If the line to be inspected is a single line, I am to request that you will forward through the inspecting officer a certificate, signed by the chairman and secretary of the company, and under the seal of the company, stating that one, and specifying which, of the three modes of working described in the accompanying statement, marked C., will be adopted.

I am further to transmit to you for the information of your directors the statement, marked D., of some of the precautions which the inspecting officers of this department have had occasion, in reporting upon accidents, to recommend for adoption from time to time in the working of railways.

The Secretary of the
Railway Company.

I have the honour to be, Sir,
Your most obedient servant,

A.

- I. A copy of the parliamentary plan and section, with any deviations, which in the construction may have been made from either, marked thereon in red; the corrections in the distances, levels, inclinations, sections of ground and radii of curves, rendered necessary by such deviations, being also marked in red, as well as the positions of the several stations. The width of cuttings and embankments on each side of the railway also to be marked on the plan.
- II. A table of gradients and level portions, with the positions of the stations distinctly shown.
- III. A table of curves and straight portions.
- IV. A table of cuttings and embankments.
- V. A table of the bridges for roads crossed by the railway.
- VI. A table of the bridges and viaducts over watercourses and valleys.
- VII. A table of level crossings.
- VIII. A table of tunnels.
- IX. A table of aqueducts and large culverts.

According to the forms forwarded herewith, observing that the situations of works, &c. should be described in each by reference to the same fixed point; and that it will be convenient if the station nearest to the metropolis, for a main line—and the junction with the main line for a branch railway—be adopted as such point of reference.

(b) Ante, 11.

X. A statement affording detailed information under the following heads:—

- 1st. Permanent Way.—Whether the line be double throughout, or partly double and partly single, or single throughout with sidings; the distances from the fixed point adopted in the tables, at which the single portions commence and terminate—or, for a single line, at which the sidings commence and terminate; whether the land has been purchased, or whether any other arrangements have been made, with a view to adding an additional line at a future period; the width of the line at formation level; the gauge; the width between the lines where double; the description of rails employed, with a diagram section, their length and weight per yard; the description and weight of the chairs, where these are employed; the mode of fixing the chairs and securing the rails; the fastenings adopted for the joints of the rails; the description of sleepers, with their smallest and average scantling and length; their distance asunder if transverse, and, if longitudinal, the details of any ties by which they are connected; the nature of the ballast, and its depth below the under surface of the sleepers; the description of switches adopted, with the name of the patentee, if they are patented; and the names of the stations or other places at which engine-turntables are provided.
- 2nd. Fences.—Description of fencing adopted on each portion of the line.
- 3rd. Drainage.—General description of the drainage employed, and if on any part of the line it has been attended with peculiar difficulty, a detailed description should be given.
- 4th. Stations.—Their names, and their distances, at commencement and termination, from the fixed point respectively.
- 5th. Width of Line.—The minimum space allowed between the sides of the largest carriages in use upon the railway, at the level of their windows, and any fixed works, such as pillars at stations and bridges, telegraph posts, sheds, &c., along the line.
- 6th. Bridges and Viaducts.—Drawings of all bridges and viaducts, either over or under the railway, in detail, accompanied by sufficient information to allow of the probable strength of each being ascertained by calculation.

XI. Drawing and Description of Carriages to be used for the Conveyance of Parliamentary or Cheap Train Passengers under the Act 7 & 8 Vict. c. 85.—The following minimum dimensions should be observed in the construction of these carriages:—They should contain 20 cubic feet of space per passenger; the area of the glass windows should afford 60 superficial inches per passenger; the seats should be provided with backs, should be 15 inches broad, and should afford 16 inches in width per passenger; they should be provided with proper means of ventilation, and with two lamps at least to each carriage.

B.

MEMORANDUM OF IMPORTANT DESIDERATA.

At the Stations.

1. The lines of railway leading to the passenger platforms to be so arranged that the engines shall always be in front of the passenger trains as they arrive at and depart from a station.
2. Platforms to be not less than 6 feet wide, at stations where the traffic is small; and the descent at the ends to be by means of ramps, and not by steps. Pillars or columns for the support of roofs not to be nearer to the edge of the platforms than 6 feet.
3. Clocks to be provided in a position where they are visible from the line.
4. Signals and distant-signals for each direction to be supplied.
5. The levers and handles of switches and signals to be placed in the most convenient positions, and to be brought close together, so as to be under the hand of the person working them. The switches to be provided with double connecting rods. The levers of the switches to be sufficiently long to enable the pointsmen to work them without risk or inconvenience, and not to be placed between the lines of rails.
6. No facing points, except on single lines or at junctions, or in exceptional cases. At all junctions, the signals and points should be worked as pointed out in No. 21. In other cases in which facing points are necessarily employed, and in which they cannot be kept locked, a low signal should be attached to them, to indicate their condition to the driver of an approaching train, showing not only whether they are set in the proper direction, but also whether they are completely turned over in that direction, and are in close contact with the standard rail.
7. Sidings to be supplied with locked chock-blocks, and, if they fall towards the main line, a blind siding or safety switch to be provided with the points closed against the main line.
8. Turntables for engines to be erected at terminal stations and at junctions and other points at which the engines require to be turned. Care should be taken to keep all turn-

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tables at a safe distance from adjacent lines of rails, so that an engine, waggon or carriage in the act of turning may not foul another line or endanger the traffic upon it.

9. Stations not to be constructed on a steeper gradient than 1 in 300, except under peculiar circumstances. When the gradient at a station is unavoidably steeper than 1 in 100, and the line is double, a catch-siding should be provided further down the incline than the passenger platform and goods-yard, to intercept runaway vehicles. When the line is single, a second line must be laid down and a catch-siding similarly provided.

As regards the Line generally.

10. For every cast-iron bridge the breaking weight should be equal to three times the permanent load due to the weight of the superstructure, added to six times the greatest moving load that can be brought upon it.

11. For every wrought-iron bridge, the greatest weight which can be brought upon it, added to the weight of the superstructure, should not produce a greater strain on any part of the material than five tons per square inch. The heaviest engines in use on railways afford a measure of the greatest moving weights to which the bridges can be subjected.

12. The upper surfaces of wooden platforms of bridges and viaducts should be protected from fire.

13. The joints of the rails should be secured by means of fish-plates, or by some other equally secure fastening.

14. In all cases, but particularly on curves, the chairs should be secured, at least partially, by iron spikes. With flat-bottomed rails, when there are no chairs, or with bridge rails, it is desirable that fang or other through-bolts should be used, at least at the joints.

15. No standing work above the level of the carriage steps should be nearer to the outer edge of the rail than 3 feet 6 inches, where the carriages are not above 7 feet 4 inches in width, outside measurement. When the carriages are of a greater width than 7 feet 4 inches, a proportionate increase should be made in the space between any such standing work and the rail. On Irish railways, the distance between the outside of the rail and the nearest standing work, should be at least 4 feet. On the broad gauge lines in England the distance should not be less than 3 feet 6 inches.

16. The intervals between adjacent lines of rails, or between lines of rails and sidings, should not be less than 6 feet.

17. When stations occur on or near a viaduct, a parapet wall on each side, 3 feet high, should be built, with a hand-railing or a fence on the top, sufficient to prevent passengers from falling over the viaduct in the dark. For the protection of the plate-layers, viaducts under the railway should be guarded by a hand-rail. Viaducts of timber and iron should be provided with man-holes, and with facilities for inspection.

18. At all level crossings of turnpike and of public roads, the gates should be capable of being closed across the railway on both sides as well as across the road; and a lodge or station-house should be provided, as is required by act of Parliament. When a level crossing occurs at a station, there should be a box, if there is not a lodge at the gates, for the use of the gate-keeper.

19. The fixed signals attached to the gates should be placed at the level crossings in convenient positions for being seen along the railway as well as along the road; and when a level crossing is so situated that an approaching train cannot be seen from a sufficient distance, distant-signals should be supplied.

20. At all junctions, main-signals and distant-signals for each line are required; and clocks should be placed in a conspicuous position for the use of the signalmen.

21. It is desirable that the signal-handles and the levers of the switches at junctions should be brought together upon a properly-constructed stage. They should be so arranged, that while the signals are at danger the points shall be free to move; that a signalman shall be unable to lower a signal for the approach of a train until after he has set the points in the proper direction for it to pass; that it shall not be possible for him to exhibit at the same moment any two signals that can lead to a collision between two trains, and that after having lowered his signals to allow a train to pass, he shall not be able so to turn his points in the wrong direction as to cause a collision between any two trains.

22. Mile-posts and gradient-boards should be provided along the line.

23. The junctions between the main line and any sidings which lead to ballast pits in use, or which are employed for colliery or other purposes, should be protected by a main signal and a distant signal in each direction; and the sidings should be so arranged that the shunting carried on at them shall present the least possible obstruction to the main line.

24. When a junction is situated near to a passenger station, or is connected with goods or mineral sidings, the platforms or sidings should be so arranged as to prevent, as far as possible, any necessity for shunting over the junction.

25. When two single lines meet, the junction should be formed on two lines of rails, either (when the traffic is expected to be considerable) as on ordinary double-line junction, or (when the traffic is not likely to be great) as a junction of a single with a double line.

26. Tunnels, and those portions of railway which are more dangerous, from obstructed view, steep inclines, heavy traffic, or liability to fog, should be protected by means of the

telegraph, or some other system of communication between the signalmen. In the 7th paragraph of statement D. will be found certain recommendations as to the way in which the telegraph should be worked.

27. All signals which are worked by a wire should be weighted, so as to fly to "danger" on the fracture of the wire.

28. Tunnels should in all cases be constructed with man-holes for the escape of the plate-layers.

C.

MODES OF WORKING SINGLE LINES.

In the case of a line being single, a certificate, under the seal, and signed by the chairman and secretary of the company, should be sent to the Board of Trade through the inspecting officer, to the effect that one of the three following modes of working single lines will be adopted, namely:—

- I. That only one engine, in steam, or two or more engines coupled together, shall be allowed to be upon the single line, or upon portions thereof (which should be defined), at one and the same time.
- II. That a system similar to that in use on the North-Eastern Railway, of working by means of a train porter, and described in the accompanying Amended Regulations, shall be adopted, viz.:—

RULES FOR WORKING THE THIRSK AND MALTON BRANCH OF THE NORTH-EASTERN RAILWAY.

General Instructions.

1. A time table showing* the working of all the trains on this branch, and a copy of these rules are to be furnished, through the respective departments, to every servant of the company employed on the branch.

2. A pilotman under the traffic department is to be appointed for working the branch.

3. He is to wear a red badge on his right arm, to signify that he is the person appointed as pilotman, and his name (and the name of the person appointed to succeed him, should any change be made), is to be given to the pointsmen at Malton and the Main Line Junction.

Instructions to the Pointsmen at Malton and the Main Line Junction.

4. You are required to have in your possession a time table showing the working of all the trains on the branch, as well as a copy of these rules, and to be acquainted with the pilotman appointed for working the branch.

5. You are not on any account whatever to allow any train or engine to move on to the branch at either end, unless the same be accompanied by the pilotman.

Instructions to the Pilotman of the Branch.

6. You are required to have on your person a time table showing the working of all the trains on the branch, and also a copy of these rules.

7. You are to wear a red badge on a your right arm, to mark that you are the pilotman of the branch.

8. The instructions given to the pointsmen at each end of the branch are, that they are not to allow any train to move on to either end of the branch, unless accompanied by you.

9. Your duty will be to travel over the branch with the various trains, and when it is necessary for a train to move on to the branch, you must always be at the junction to accompany it.

10. When there are two trains to pass over the branch in the same direction, you must accompany the first train on to the branch, and, having dispatched it, you must wait for the second, and then proceed with it along the branch to the other end, and until your arrival no train is to be permitted to enter from the opposite end.

11. In case the second train which you accompany shall be a goods' train, and you find by your time table that you cannot arrive at the junction or end of the branch in time to allow the passenger train to enter at its proper time, you must shunt the goods' train into a siding, detach the engine, and proceed with it to the junction in time to accompany the passenger train on its entering the line. You will attach both engines to the passenger train, and on arriving at the siding where the goods' train is standing, the goods' engine shall be detached and shall take on the goods' train to its destination accompanied by you, after the passenger train has proceeded on its journey.

12. In case the first train which you dispatch from one end should be a goods' train, you will wait, according to rule 10, and accompany the succeeding passenger train, and in case the passenger train should overtake and pass the goods' train, your duty will then be to remain with the goods' train and to accompany it to the terminal station or junction.

13. When an engine is disabled and unable to proceed to its destination, you are to go immediately for another engine; and before you go you are to instruct the engineman that should the disabled engine be got right again before you return, it is not, under any circumstances, to proceed along the line, but is to wait until you are present.

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14. When there are two engines attached to a train, they must not be separated, but must be considered as one with reference to these regulations.

15. If these rules are strictly obeyed, it will be impossible for two trains to meet each other when proceeding in opposite directions.

16. You are required not only to observe all the rules for working this branch contained in this paper, but to notice any infraction of them by other parties, and to report the same immediately to the head of your department.

III. That the line shall be worked by train-staff, in the mode adopted on many of the leading railways, and described in the following amended regulations:—

RULES FOR WORKING THE SINGLE LINE BETWEEN A., B., C., &c.

1. Either a train-staff or a train-ticket is to be carried with each engine or train to and fro, and for this purpose

[One, two or more] train-staffs and sets of train-tickets will be employed, viz.:—

	Colour of Staff and Ticket.	Form of Staff and Ticket.
One between A. and B.	Red.	Square.
One between B. and C.	Blue.	Round.
&c. &c.	&c.	&c.

2. No engine or train is to be permitted to leave either of the terminal stations, A., B. or C., &c. unless the staff for the portion of line over which it is to travel is then at the station.

3. If no second engine or train is intended to follow, the staff is to be given to the guard or person in charge.

4. If other engines or trains are intended to follow before the staff can be returned, a train-ticket stating "staff following" will be given to the person in charge of the leading train, and so on with any other except the last train, the staff itself being given to the person in charge of the last train. After the staff has been sent away, no other engine or train can leave the station under any circumstances whatever until its return.

5. The train-tickets are to be kept in a box fastened by an inside spring, and the key to open the box is the train-staff, so that a ticket cannot be obtained without the train-staff.

6. The train-staffs, the train-tickets and the ticket-boxes, are painted or printed in different colours, red between A. and B.; blue between B. and C.; &c., the inside springs and the keys on the staffs being so arranged that the red staff cannot open the blue box, nor the blue staff the red box, and so forth. This is to prevent mistakes.

7. The ticket-boxes are fixed by two brackets in the booking-office at the terminal stations, the brackets being turned up at the end to receive the train-staff when it is at the station.

8. The clerk in charge, the inspector or the person in charge for the time at a terminal station, is the sole person authorized to receive and deliver the staff.

9. A guard or engine-man taking a staff or ticket beyond the portion of line to which it belongs, or leaving a station without the staff, or without a ticket, as hereinbefore explained, will render himself liable to dismissal, although no accident may arise.

10. No engine-man is to start from A., B. or C., &c., with a train until the guard has shown him the train-staff or train-ticket, or with an engine, until he has received either the one or the other.

11. The usual special-train tail-signal, "engine following," is to be used when a ticket is given, for the guidance of the platelayers and gatekeepers upon the line.

12. When a ballast train has to work on the line, the staff is to be given to the guard in charge of it. This will close the line whilst the ballast train is at work. The ballast train must proceed afterwards to one of the terminal stations of the staff, to open the line, before the ordinary traffic can be resumed.

13. In the event of an engine or train breaking down between two terminal stations, the fireman is to take the train-staff to the terminal station in the direction whence assistance may be expected, that the staff may be at the station on the arrival of an engine. Should the engine that fails be in possession of a train-ticket instead of the staff, assistance can only come from the station at which the train-staff has been left. The fireman will accompany any assisting engine to the place where he left his own engine.

N.B.—The train-staff may either be fixed in a socket on the engine or tender, or carried over the shoulder by means of a cross-belt.

D.

PRECAUTIONS RECOMMENDED IN THE WORKING OF RAILWAYS.

1. There should be a break-vehicle with a guard in it at the tail of every train; this vehicle should be provided with a raised roof and extended sides, glazed to the front and back; and it should be the duty of the guard to keep a constant look-out from it along his train.

2. There should be a means of intercommunication, between a guard at the tail of every passenger train and the engine driver.

3. There should be at least one break-vehicle to every three or four carriages in a passenger train, a proportion which may be economically provided by the use of continuous breaks. On steep inclines, and with trains which travel at high speed, a larger proportion of break power is required.

4. The tyres of railway wheels should be so secured to the rims of the wheels as to prevent them from flying open when they are fractured.

5. The engines employed with passenger trains should be of a steady description, with not less than six wheels, with a long wheel-base, with the centre of gravity in front of the driving wheels, and with the motions balanced. They should not be run tender first.

6. Records should be carefully kept of the work performed by the wearing parts of the rolling stock, to afford practical information in regard to them, and to prevent them from being retained in use longer than is desirable.

7. When a line is worked by telegraph, the telegraph-huts should be commodious, and should be supplied with clocks, with record-books, with a separate needle for signalling the trains on each line of rails, and with an extra needle for other necessary communications between the signalmen. The telegraph-instruments and signal-handles should face the directions in which they work.

8. When drovers or other persons are permitted to travel with a goods or a cattle train, a suitable vehicle should be provided for their accommodation near the front of such a train.

APPENDIX.

FORMS.

FORMS (a).

No. 1.

A. and B. Railway Bill.

1. Petition to the House of Commons against a railway bill, ante, text, 20.

Against.

Petition of the undersigned against the said bill, praying to be heard by counsel.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

The humble petition of the several corporations and persons whose seals and names are hereunto respectively set and subscribed :

Showeth,

That a bill is at present depending in your Honourable House intituled "A Bill to make a Railway from A. to B."

That the powers and provisions of the said bill are injurious to the interests of your petitioners, and injurious to public policy [*if clauses only are objected to, say, "that the powers and provisions contained in certain clauses (specifying them) of the said bill"*], &c.

That, &c. [*here state grounds of objection, taking care that they are sufficient to give the petitioners a locus standi; see ante, text, 27*].

That in these and other respects the said bill [*or "clauses"*] would be highly injurious to your petitioners, and the preamble of the said bill [*or "the said clauses"*] cannot be substantiated by evidence.

Your petitioners therefore humbly pray that the said bill may not be allowed to pass into a law as it now stands [*or "that the said clauses be not allowed to form part of the said bill"*], and that they may be heard by themselves, their counsel, agents and witnesses against the preamble (*b*) [*or "the said clauses of the said bill affecting their interests"*], and that they may have such other and further relief in the premises as to your Honourable House shall seem meet.

And your petitioners will ever pray.

No. 2.

2. Certificate of justices that the capital of the company has been subscribed. (8 & 9 Vict. c. 18, s. 17, ante, App. 49.)

We, A. B., of &c., and C. D., of &c., two of her Majesty's justices of the peace for the county of —, assembled and acting together in petty sessions at —, in the said county, on the application of the — Railway Company, incorporated by an act of Parliament, intituled [*here insert the title of the special act*], and on production of the subscription deeds of the said company, do hereby, by virtue and in pursuance of the authority vested in us by the said act, certify that the whole sum of [*here insert the amount of the capital of the company*], being the whole of the capital or estimated sum for defraying the expenses of the undertaking, as provided by the said act, has been subscribed for by persons under a contract binding themselves, their heirs, executors and administrators, for the payment of the several sums by the said persons respectively subscribed.

Witness our hands this — day of —, in the year of our Lord —.

A. B.
C. D.

No. 3.

A. and B. Railway.

C. Branch.

3. Notice from the company to owners, lessees, &c. of lands, stating that lands are required for the railway, and that the company are willing to treat for the purchase thereof. (8 & 9 Vict. c. 18, ss. 18, 21, ante, text, 180.)

The A. and B. Railway Company, incorporated by an act of Parliament passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled "An Act for making a Railway from A. to B., with Branches to the Towns of —, in the County of —, and —, in the County of —," do hereby, in pursuance of the powers and

(a) See a list of these forms in the Table of Contents, following the title page.

(b) It is necessary to petition against the preamble, if the object is to defeat the bill altogether.

provisions of the said act; of an act of Parliament passed in the ninth year of the reign of her Majesty Queen Victoria, intituled "An Act to amend the Acts relating to the A. and B. Railway, and to authorize the formation of a Junction Railway and several Branch Railways connected with the same," of "The Lands Clauses Consolidation Act, 1845," and of "The A. and B. Railway (C. Branch) Act, 1852," give you notice, that they the said company require to purchase and take for the purposes of the said C. Branch Railway and works authorized by the said acts secondly and last hereinbefore mentioned, a certain portion of the land and hereditaments situate in the parish of —, in the county of —, which on the map or plan, and in the book of reference deposited in the year one thousand eight hundred and fifty-four at the office of the clerk of the peace for the said county of —, as mentioned in the said secondly mentioned act, is numbered —; and that the said portion of land so required to be purchased and taken by the said company is particularly delineated and described in the map or plan hereunto annexed, and is the part thereon colored —, containing in the whole — or thereabouts: And the said company do hereby further give you notice, that, it appearing to the said company that you, or some or one of you, are or are reputed to be entitled to or interested in the said portion of land, or enabled or entitled to sell and convey or release the same, the said company are willing and hereby offer to treat with you as to the purchase thereof and as to the compensation to be made to you and every of you, and all the parties interested or concerned therein, for the damage that may have been or may be sustained by you and them respectively by reason of the execution of the afore-said branch railway and works: And the said company do hereby demand of you and every of you the particulars of your several estates and interests in the said portion of land, and of the claims made by you and every of you in respect thereof, and do require you to deliver such particulars at the office of the said company in the city of — within twenty-one days from and after the receipt hereof, in default whereof the said company will proceed forthwith to procure the amount of the said purchase-money and compensation payable in respect of the said portion of land to be settled in the manner prescribed by "The Lands Clauses Consolidation Act, 1845."

Dated this — day of —, one thousand eight hundred and —.

Signed on behalf of the said A. and B. Railway Company.
—, Secretary.

To A. B. and C. D. and E. F., and all and every }
other person or persons whom it may }
concern.

Herewith is sent a schedule of claim, which you are requested to fill up and return.

Schedule to be filled up by Parties claiming, &c.

First, state the name, address and description of }
the party making the claim.

State the particulars of the estate, share and }
interest in or upon the said lands in respect }
whereof the claim is made, whether in respect }
of an estate of freehold, &c.

[so setting forth, under separate titles, the various particulars which the owners and lessees are required to specify.] As to the proper mode of serving the above notice on owners and lessees, see 8 & 9 Vict. c. 18, ss. 19, 20, ante, App. 49, and text, 180.

No. 4.

To the — Railway Company.

I, A. B., — of — in the county of —, being possessed of, or otherwise well entitled to, certain lands and other premises situate in the parish of —, in the county of —, (which said lands and premises are more particularly described in the schedule annexed to the notice hereinafter next mentioned;) having received a certain notice from you the said company bearing date the — day of —, demanding from me a statement in writing of the particulars of my estate and interest in certain lands therein mentioned, and required for the purposes of the said company, and also of the claims made by me in respect of the same, do hereby give you notice that I claim an estate of fee simple in possession [or "an estate of fee simple in possession subject to a certain lease bearing date the — day of —, and granted to one — for — years," or "an estate in fee, &c., in the said lands which are copyhold of the manor of —," or "an estate for lives," or "years," as the case may be (c).] And I hereby further give you notice that I claim the sum of £—, for the purchase of my interest in the lands specified in the said notice as

4. Notice by claimant to company requiring that the amount of compensation should be settled by arbitration. (8 & 9 Vict. c. 18, s. 23, ante, App. 49, and see text, 283.)

(c) The particulars of the estate, share, interest or charge in respect whereof the claim is made should be here inserted, whether in respect of an estate of freehold, copyhold or leasehold tenure: if leasehold, for what term of years: if the claim be on

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required for the purposes of the said railway, and for compensation for injury by severance, and other the damage to be sustained by me by reason of the execution of the works of the said railway. And I hereby further give you notice that, unless you the said company agree to pay the sum of money above claimed, it is my desire that the amount to be paid to me in respect of the above claims shall be settled by arbitration in the manner prescribed in "The Lands Clauses Consolidation Act, 1845," and I do hereby give you notice that I have by writing under my hand, bearing even date herewith, nominated and appointed —, of —, to be the arbitrator on my behalf in the matters aforesaid, and do hereby request you to nominate and appoint some person to act as arbitrator on your behalf in the said matters.

Witness my hand this — day of —, A.D., 18—.

A. B.

—
No. 5.

5. Appointment of arbitrator by the party demanding compensation. (8 & 9 Vict. c. 18, s. 25, App. 50, and see text, 285.)

Whereas I, the undersigned A. B., of —, &c., did on —, receive a notice in writing from the — Railway Company (a copy of which is hereunto annexed), requiring certain lands, therein mentioned, for the purposes of the said railway, and whereas I have been unable to agree with the said company as to the sum of money to be paid to me for the purchase of the same, and for the compensation for injury by severance and other the damage to be sustained by me by reason of the execution of the works of the said railway; and whereas by a notice in writing under my hand bearing even date herewith, and directed to the said company, containing the several particulars prescribed in that behalf in "The Lands Clauses Consolidation Act, 1845," I have signified to the said company my desire to have the question of compensation in relation to the matters in the said notice contained settled by arbitration: Now therefore, in pursuance of the provisions of the said Lands Clauses Consolidation Act, 1845, I do hereby nominate and appoint C. D., of —, to be the arbitrator, on my behalf, of and concerning the premises.

As witness my hand this — day of —, 18—.

Witness —.

A. B.

—
No. 6.

6. Notice of the appointment of an arbitrator by a claimant, after the company have appointed one. (8 & 9 Vict. c. 18, s. 25, ante, App. 50, and see text, 285.)

To the — Railway Company, and to — Esquire, the Secretary to the — Company, and to all whom it may concern:

I, the undersigned —, of —, in the parish of —, in the county of York, do hereby give you notice that, pursuant to your notice and request, bearing date the — day of —, under the hand of the said —, reciting that disputes had arisen as to the compensation to be paid to me for my land situate in the parish of —, in the county of —, required to be taken for the said — Railway Company, and for injury to my said land and estate by the works of the said company in the said notice more particularly mentioned and referred to, and giving me notice that you had appointed — of the parish of —, in the county of —, land agent and land valuer, to be an arbitrator on your behalf, to whom you had referred such questions and disputes, and requiring me to appoint an arbitrator on my behalf to whom such questions and disputes might be referred, I have, by writing under my hand bearing date this — day of — instant, nominated and appointed — of —, in the parish of —, in the West Riding of the County of York, gentleman, to be the arbitrator on my part and behalf, to whom the said question of disputed compensation shall be referred; a copy of which appointment is hereunto annexed, and the said appointment and nomination will be immediately delivered to the said — as such arbitrator as aforesaid.

Witness my hand this — day of —, one thousand eight hundred and —.

F. H.

—
No. 7.

7. Notice to arbitrators requiring them to appoint an umpire. (8 & 9 Vict. c. 18, s. 28, ante, App. 50, and see text, 286.)

To Mr. — of —, in the parish of —, in the county of —, gentleman; and to Mr. — of —, in the parish of —, in the county of —, land agent:

Whereas the — Railway Company have, by their appointment in writing under the hand of — their secretary, bearing date the — day of —, pursuant to "The Lands Clauses Consolidation Act, 1845," appointed you the said — to be the arbitrator on the said company's behalf, to settle certain questions, disputes and differences, between me

account of any interest or charge, as distinct from an estate in the lands, &c., the particulars of such interest or charge should be stated: and if any claim be made on

account of injury or damage caused by the taking of the lands, the particulars should be stated.

the undersigned — and the said — Railway Company, set forth and referred to in the said appointment; and I the said — have, by an appointment in writing under my hand, bearing date the — day of —, pursuant to "The Lands Clauses Consolidation Act, 1845," appointed you the said — to be the arbitrator on my behalf, to settle certain questions, disputes and differences between me the said — and the said — Railway Company, set forth and referred to in the said appointment, being the same questions, disputes and differences as are referred to or set forth in the appointment of the arbitrator of the said — Railway Company, and I have delivered the said nomination and appointment to you the said —: Now I, the said —, being one of the parties to such arbitration, do hereby request you the said arbitrators, before you enter upon the matters referred to you, to nominate and appoint, by writing under your hands, an umpire to decide on any such matters so referred to you as aforesaid on which you shall differ, or which shall be referred to such umpire under the provisions of "The Lands Clauses Consolidation Act, 1845," or "The — Railway Act, 1846," and in case for seven days after this request you shall neglect to appoint an umpire, I shall apply for the appointment of an umpire to decide on any such matters so referred to you on which you shall differ, or which shall be referred to such umpire under the provisions of "The Lands Clauses Consolidation Act, 1845," or "The — Railway Act, 1846," pursuant to the twenty-eighth section of "The Lands Clauses Consolidation Act, 1845," in that behalf.

Witness my hand the — day of —, one thousand eight hundred and —.

T. H.

No. 8.

To the — Railway Company.

Whereas, in exercise of the powers contained in the act or acts of Parliament under which you are authorized to make and construct a certain railway from — to —, you have entered upon [or "and taken"] certain parcels of land [*here describe the lands with particularity, as in the notice Form No. 3, ante, 274*], for the purpose of making spoil banks and side cuttings thereon [or "for the purpose of obtaining therefrom materials for the construction [or 'repair'] of the said railway" [*describe the injuries done to the lands according to the facts*]], and for other purposes connected with the construction of the said railway, whereby the said lands have been damaged and injuriously affected*: Now I, the undersigned A. B., being the owner in fee-simple of the above-mentioned lands, do hereby, in pursuance of the statutes in that case made and provided, give you the said company notice, that I require you to pay me compensation in respect of my said lands, which you have damaged and injuriously affected [or "taken"] as aforesaid, and in respect of my interest therein, and that the amount of my claim for compensation, by reason of the premises, is £—. And further take notice, that, unless you are willing to pay to me the said sum of £—, and shall enter into a written agreement for that purpose within twenty-one days after the receipt by you of this notice, then it is my desire that the amount of compensation to be paid to me by you by reason of the premises shall be ascertained by arbitration, according to the provision of the act or acts of Parliament in that case made and provided. And, if you fail to pay me the said sum of £—, or to enter into such written agreement as aforesaid, within the said twenty-one days, then and in that case I do hereby request and require you to nominate and appoint an arbitrator to act on your behalf in the matter of the said arbitration.

Witness my hand this — day of —, in the year of our Lord 18—.

A. B.,
of [insert address.]

No. 9.

To the — Railway Company.

Whereas, &c. [*as in the Form, No. 8, supra, to**; then proceed as follows:] Now I, the undersigned A. B., being the owner in fee simple of the above-mentioned lands, do hereby, in pursuance of the statutes in that case made and provided, give you the said company notice, that I require you to pay me compensation in respect of my said lands, which you have damaged and injuriously affected [or "taken"], as aforesaid, and in respect of my interest therein, and that the amount of my claim for compensation, by reason of the premises, is £—. And further take notice that, unless you are willing to pay to me the amount of the compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt by you of this notice, then it is my desire that the amount of the compensation to be paid to me by you by reason of your entering on such lands as aforesaid shall be settled by a jury, according to the provisions contained in the act or acts of Parliament in that case made and provided. And if you the said company fail to pay the said sum of £—, or to enter into such written agreement as aforesaid, then and in that case I do hereby request and require you, within twenty-one

8. Notice from the owner of lands to the company requiring compensation for lands taken or injuriously affected, and requiring the amount of compensation to be settled by arbitration, more than 50*l.* being claimed. (8 & 9 Vict. c. 18, s. 68, ante, App., 55, and see text, 192.)

9. A similar form, where the owner requires a jury to assess the compensation. (8 & 9 Vict. c. 18, s. 68, ante, App. 55, and see text, 192.)

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days after the receipt of this notice, to issue your warrant to the sheriff of — [here insert the county], or other proper officer, to summon a jury [if a special jury is desired, alter the form accordingly; see 8 & 9 Vict. c. 18, s. 54, ante, 54] for settling the amount of the said compensation.

Witness my hand this — day of —, in the year of our Lord 18—.

A. B.,
of [insert address.]

10. Notice from a tenant in tail, &c., or other party empowered to convey lands to the company, requiring compensation for lands taken or injuriously affected, and requiring the amount of compensation to be settled by arbitration, more than 50*l.* being claimed. (8 & 9 Vict. c. 18, s. 68, ante, App. 55, and see ante, text, 192.)

No. 10.

To the — Railway Company.

Whereas, &c. [as in the Form No. 8, supra, to;* then proceed as follows:] Now I, the undersigned A. B., being the tenant in tail [or "being committee of E. F., Esq., a lunatic, the owner in fee simple," as the case may be, setting forth the estate and interest of the parties in the lands: see Form No. 4, ante, 275] of the above-mentioned lands, do hereby, in pursuance of the statutes in that case made and provided, give you the said company notice, that I require you to pay compensation in respect of the said lands, which you have damaged and injuriously affected [or "taken"] as aforesaid, and in respect of my estate and interest therein, and that the amount of the claim for compensation, by reason of the premises, is £—. And further take notice, that, unless you are willing to pay or deposit the said sum of £—, and shall enter into a written agreement for that purpose, within twenty-one days after the receipt by you of this notice, then it is my desire that the amount of compensation to be paid by you by reason of the premises shall be ascertained by arbitration, according to the provisions of the said statutes in that case made and provided. And if you the said company fail to pay or deposit the said sum of £—, or to enter into such written agreement as aforesaid within the said twenty-one days, then and in that case I do hereby request and require you to nominate and appoint an arbitrator to act on your behalf in the matter of the said arbitration.

Witness my hand this — day of —, in the year of our Lord 18—.

A. B.,
of [here insert address.]

11. A similar form where a tenant in tail, &c. requires a jury to assess the compensation. (8 & 9 Vict. c. 18, s. 68, ante, App. 55, and see text, 192.)

No. 11.

To the — Railway Company.

Whereas, &c. [as in the Form No. 8, supra, to;* then proceed as follows:] Now I, the undersigned A. B., being the tenant in tail [or "being committee duly appointed of E. F., Esq., a lunatic, the owner in fee simple," as the case may be, setting forth the estate and interest of the parties in the lands; see Form No. 4, ante, 275] of the above-mentioned lands, do hereby, in pursuance of the statutes in that case made and provided, give you the said company notice, that I require you to pay compensation in respect of the said lands which you have damaged and injuriously affected [or "taken"] as aforesaid, and in respect of my estate and interest therein, and that the amount of the claim for compensation by reason of the premises is £—. And further take notice, that, unless you are willing to pay or deposit the amount of the compensation so claimed, and enter into a written agreement for that purpose within twenty-one days after the receipt by you of this notice, then it is my desire that the amount of the compensation to be paid by you by reason of the premises shall be settled by a jury according to the provisions contained in the statutes in such case made and provided. And, if you fail to pay or deposit the said sum of £—, or to enter into such written agreement as aforesaid, then and in that case I do hereby request and require you, within twenty-one days after the receipt by you of this notice, to issue your warrant to the sheriff of — [here insert the county], or other proper officer, to summon a jury [if a special jury is desired, alter the form accordingly; see 8 & 9 Vict. c. 18, s. 54, ante, 54] for settling the amount of the said compensation.

Witness my hand, this — day of —, in the year of our Lord 18—.

A. B.,
of [here insert address.]

12. Notice required to be given by the company three weeks before lands are entered upon for temporary occupation. (8 & 9 Vict. c. 20, ss. 32, 33, ante, App. 81, and see text, 203.)

No. 12.

— Railway.

The — Railway Company, incorporated by virtue of an act, intituled [insert the title of the special act], hereby give you and each and every of you notice, that, under the provisions of the said act, the temporary possession of certain pieces or parcels of land, called —, situate in the parish of —, in the county of —, containing by estimation — A. — R. — P. or thereabouts, which said pieces or parcels of land are more particularly delineated and described in the plan and schedule hereunto annexed [as the case

may be, as in the notice, Form No. 3, ante, 274], is required by the said company, for the purpose of carrying into execution the purposes of the said act; and further take notice,* that they the said company intend, at the expiration of three weeks from the service upon you of this notice, to occupy the said lands, so long as may be necessary for the construction [or "repair"] of the said railway and the accommodation works connected therewith, and to use the same as they are authorized in that behalf by the said act or otherwise; that is to say, for the purpose of taking earth or soil by side cuttings therefrom [or "for the purpose of depositing soil thereon," or "for the purpose of obtaining materials therefrom for the construction [or 'repair'] of the said railway and accommodation works," as the case may be.] And, in pursuance of the directions contained in the said railway act, and a certain act incorporated therewith, intituled "The Railways Clauses Consolidation Act, 1845," you and each and every of you are hereby informed, that by sections 39, 42, 43 and 44 of the said last-mentioned act the following provisions are made respecting the right of the owners and occupiers of lands, whereof temporary occupation is required, to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof; that is to say, by section 39 [here the foregoing sections may be given at length, or the substance only may be stated].

Witness our hands, this — day of —, in the year of our Lord 18—.

A. B. } Directors of the said railway
C. D. } company.

[Or "E. F., Treasurer [or 'Secretary'] of the said railway company."]

To A. B., Esq., owner, and C. D. }
and E. F., occupiers of the lands }
above mentioned, and to all other }
persons whom it may concern. }

No. 13.

— Railway.

The — Railway Company, incorporated, &c. [as in the foregoing notice, No. 12, to * ; then proceed as follows :] that they the said company intend, at the expiration of ten days from the service upon you of this notice, to occupy the said lands as long as may be necessary for the construction [or "repair"] of the said railway and the accommodation works connected therewith, and to use the same as they are authorized in that behalf by the said act or otherwise, for the purpose of, &c. [here insert any special purpose requiring only ten days' notice : see sect. 33]. And, in pursuance of the directions contained in the said act, and in a certain act incorporated therewith, intituled "The Railways Clauses Consolidation Act, 1845," you and each and every of you are hereby informed that by sections 39, 43 and 44 of the said last-mentioned act the following provisions are made respecting the right of the owners and occupiers of lands to demand and receive compensation in all cases where temporary possession of lands for the purposes aforesaid shall be taken by the company by virtue of the powers in the hereinbefore-mentioned act or acts contained; that is to say, by sect. 39 [here the foregoing sections may be given at length, or the substance only may be stated].

Witness our hands, this — day of —, in the year of our Lord 18—.

A. B. } Directors of the said railway
C. D. } company.

[Or "E. F., Secretary [or 'Treasurer'] of the said railway company."]

To A. B., Esq., owner, and C. D. and }
E. F., occupiers of the lands within }
mentioned, and to all other persons }
whom it may concern. }

As to the proper mode of serving the foregoing notices, see 8 & 9 Vict. c. 20, s. 34, ante, App. 82, which enacts, "that such notices shall either be served personally on such owners and occupiers, or left at their last usual place of abode, if any such can, after diligent inquiry, be found, and in case any such owner shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands."

13. Notice required to be given by the company ten days before lands are temporarily occupied. (8 & 9 Vict. c. 20, ss. 32, 33, ante, App. 81, and see text, 203.)

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14. Notice from owner or occupier to the company, requiring them not to use lands for temporary purposes, on the ground that the lands or materials are essential to be retained by the owner. (8 & 9 Vict. c. 20, s. 35, ante, App. 82, and see text, 204.)

No. 14.

To the ——— Railway Company.

Whereas, by a certain notice under the hand of A. B. and C. D. [*as the case may be*], bearing date the ——— day of ——— last, I am informed that you intend to occupy (for temporary purposes) and use certain lands [*or "lands and materials"*] belonging to me [*or "in my occupation"*], situate at, &c., for the purposes in the said notice particularly mentioned: [*This recital will vary according to the nature of the notice which the company may have given:*] Take notice, that I the undersigned ———, as the owner [*or "occupier"*] of such lands, do hereby, in pursuance of the statute in that case made and provided, object to your making use of such lands, or of any part or parcel thereof [*as the case may be*]*; and that the ground of my said objection is, that the lands proposed by you to be taken as aforesaid [*or some part thereof, and the materials contained therein*] are essential to be retained by me [*or, if the notice is given by the occupier, "by A. B., Esq., the owner thereof"*], in order to the beneficial enjoyment of other neighbouring lands belonging to me [*or "to him"*]. And further take notice, that you are hereby required not to enter upon or use the said lands in any manner whatsoever, and that it is intended forthwith to apply for an order of justices to prevent the said lands [*or "lands and materials"*] from being at any time taken or used by you.

Witness my hand, this ——— day of ———, in the year of our Lord 18—.

A. B., owner [*or "occupier"*] of the said lands.

15. Notice from owner or occupier to the company, requiring them not to use lands for temporary purposes, on the ground that other contiguous lands are more fitting to be used. (8 & 9 Vict. c. 20, s. 35, ante, 82, and see text, 204.)

No. 15.

To the ——— Railway Company.

Whereas, by a certain notice, &c. [*as in the foregoing notice, Form No. 17, to *; then proceed as follows:*] and that the ground of my said objection is, that certain lands called or known by the name of ———, situate at ———, in the occupation of one ——— [*as the case may be, describing the lands accurately*], being lands lying contiguous or near to those proposed by you to be taken for the said purposes in the said notice mentioned, are more fitting to be used for such purposes by you the said company. And further take notice, that you are hereby required not to enter upon or use the said lands referred to in your said notice in any manner whatever, and that it is intended forthwith to take the necessary steps to prevent the said lands [*or "lands and materials"*] from being at any time taken or used by you.

Witness my hand, this ——— day of ———, in the year of our Lord 18—.

A. B., owner [*or "occupier"*] of the said lands.

16. Order of justices that lands for temporary purposes shall not be taken, the same being necessary for the beneficial enjoyment of other lands. (8 & 9 Vict. c. 20, s. 36, ante, App. 82, and see text, 204.)

No. 16.

——— } Whereas it hath been made to appear unto us, A. B. and C. D., two of her
to wit. } Majesty's justices of the peace, acting in and for the said county, in petty sessions assembled, that the ——— Railway Company did, by notice in writing, under the hand of the secretary of the said company, bearing date ———, and addressed to A. B., of ———, give notice that they intended to enter upon certain lands, situate, lying and being in the aforesaid county of ———, belonging to the said A. B., more particularly mentioned and described in the said notice, for the purpose [*as specified in the notice*]; and that the said A. B. did, by notice in writing to the said company, within ten days after the service of such first-mentioned notice, object to the said company making use of such lands on the ground that the lands proposed to be taken for such purposes are essential to be retained by him, the said A. B., in order to the beneficial enjoyment of other neighbouring lands belonging to him; and whereas the said company, being duly summoned, and also the said A. B. did come and appear before us, the said justices: Now we, the said justices, having duly considered the circumstances of the case, and having inquired into the truth of such ground of objection on the part of the said A. B., do, for the reason hereinafter assigned, hereby order that the said company shall not take or use, without the previous consent, in writing, of the said A. B., any of the lands or materials in the said notice alleged to be required by the said company, and so proposed to be taken, on the ground that the said lands are essential to be retained by the said A. B., in order to the beneficial enjoyment of his other neighbouring lands, by reason that the occupation of the lands for the purposes aforesaid, by the said company, would [*here state the special reasons*].

Given under our hands and seals, this ——— day of ———, A.D. 18—.

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No. 17.

— } [As above to *, then proceed as follows:] That other lands in the said county to wit. } of —, lying contiguous or near to those proposed to be taken, belonging or reputed to belong to C. D., and in the occupation of E. F., and which are authorized to be taken by the said company for the purposes aforesaid, under the provisions of the said acts, are sufficient in quantity for the purposes of, and are more fitting to be used by the said company; and whereas the said company have refused and still refuse to occupy such last-mentioned lands, in lieu of those mentioned in the notice served by them upon the said A. B.; and whereas the said company and the said C. D. and E. F. being duly summoned, together with the said A. B., did come and appear before us, the said justices: Now we, the said justices, having heard the evidence of the said several parties and their respective witnesses, and considered the circumstances of the case, do order and determine that the said company do use, and we do hereby authorize them to occupy and use accordingly, the lands belonging to the said C. D., and in the occupation of the said E. F. [describing the lands], for the purposes aforesaid, instead and in lieu of the lands of the said A. B., originally proposed to be taken by the said company, as aforesaid.

17. Order of justices, that lands, other than those originally required by the company, shall be taken. (8 & 9 Vict. c. 20, s. 37, ante, App. 82, and see text, 203.)

Given under our hands and seals, this — day of —, A.D. 18—.

No. 18.

To the — Railway Company.

Whereas, in exercise of the powers contained in the act or acts of Parliament under which you are authorized to make and construct a certain railway from — to —, you have entered upon certain parcels of lands [here describe the lands with particularity], for the purpose of making spoil banks and side cuttings thereon [or “for the purpose of obtaining therefrom materials for the construction [or ‘repair’] of the said railway,” as the case may be] and for other purposes connected with the construction of the said railway; and whereas, by the said act or acts of Parliament, authority is given to the owners or occupiers of lands so entered upon as aforesaid, or to parties having such estates or interests therein as, under the provisions in the said act or acts mentioned, would enable them to sell or convey lands, to serve notice in writing on the company, who shall have entered on such lands for the purposes aforesaid, requiring them to purchase such lands, or the estates and interests therein capable of being sold and conveyed: * Now I, the undersigned A. B., being the owner in fee simple of the above-mentioned lands, do hereby, in pursuance of the authority aforesaid, give you the said company notice that I require you to purchase the said lands of me, and all my estate and interest therein, and that the amount of my claim for compensation or purchase money is £—. [The following addition may be made to this notice, if it is considered desirable:—And further take notice, that unless you the said company are willing to pay to me the said sum of £—, then it is my desire that the amount of compensation to be paid to me by you for the purchase of the said lands shall be ascertained by arbitration, according to the provisions of the act or acts of Parliament in such case made and provided: and I hereby require you the said company to nominate and appoint an arbitrator to act on your behalf in the matter of the said arbitration. (If the arbitrator be named, see Forms Nos. 4 and 5.)]

18. Notice where the owner of lands taken for temporary purposes requires the company to purchase and to assess the amount of compensation by arbitration, more than 50*l.* being claimed. (8 & 9 Vict. c. 20, ss. 42, 44, ante, App. 83, and see text, 205.)

Witness my hand, this — day of —, in the year of our Lord 18—.

A. B.,
of [insert address].

No. 19.

To the — Railway Company.

Whereas, &c., [as in the Form No. 18 to *; then proceed as follows:] Now I, the undersigned A. B., being the tenant in tail [or “being committee duly appointed of A. B., Esq., a lunatic, the owner in fee simple,” as the case may be, setting forth the estate and interest of the parties in the lands; vide Form, No. 4, ante, 275] of the above-mentioned lands, do hereby, in pursuance of the authority aforesaid, give you the said company notice, that I require you to purchase the said lands and the estate and interest therein capable of being sold and conveyed by me, and that the amount of the claim for compensation by reason of the premises is £—; and that on payment or deposit thereof, I am ready to make a conveyance of the said lands to you. [A notice requiring an arbitration, as at the foot of Notice No. 18, supra, may be here added.]

19. A similar form, where a tenant in tail, &c., or other party empowered to convey lands taken for temporary purposes, requires the company to purchase, and to assess the amount of compensation by arbitration, more than 50*l.* being claimed. (8 & 9 Vict. c. 20, ss. 42, 44, ante, App. 83, and see text, 205.)

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Sect. 44 (ante, App. 83) enacts that the amount of compensation in the foregoing cases shall be determined in the manner provided by the Lands Clauses Consolidation Act, for determining the amount of compensation to be paid for lands taken under the provisions of that act. Reference must therefore be made to sect. 21 and the following sections of that act (ante, App. 49). The result seems to be, that, unless the claimant has demanded an arbitration, the company, on the receipt of the Notices, Nos. 18 and 19, should, in pursuance of sect. 38 (ante, App. 51), proceed to issue a warrant to the sheriff, first giving notice of their intention to the claimant, and stating what sum of money they are willing to pay for the lands. The notice may be in the following form:—

20. Notice from the company to owner, &c. of lands which the company have been required to purchase under sect. 68, that they intend to issue a warrant to the sheriff, and stating the sum they are willing to pay for the lands. (8 & 9 Vict. c. 20, s. 44, ante, App. 83; 8 & 9 Vict. c. 18, s. 38, ante, App. 51.)

For the warrant to the sheriff, see Form No. 25, post, 284.

No. 20.

The — Railway Company.

Whereas, by a certain notice in writing under your hand, directed to us, the above-mentioned railway company, bearing date on or about the — day of —, A.D. —, in which it is recited that we the said company, in exercise of the powers contained in the act or acts of Parliament under which we are authorized to make and construct a certain railway from — to —, had entered upon certain parcels of land in the said notice particularly mentioned, for the purpose, &c. [*reciting the notice according to the facts*]; and whereas we the said company are not willing to pay the said sum of £— so required by you as and for compensation, as in the said notice is mentioned: Now we, the said company, do hereby, in pursuance of the statute or statutes in such case made and provided, give you notice that we intend, after the expiration of ten days from the service upon you of this notice, to issue our warrant to the sheriff or other proper officer of the county of —, and to cause a jury to be summoned to inquire of and determine the sum of money to be paid by us the said company for the purchase of the fee simple in possession, free from incumbrances [*here state the interest which is to be purchased*], of the pieces or parcels of land mentioned in your said notice. And further take notice, that we the said railway company are willing to give the sum of £— for [*the fee simple and inheritance in possession, as the case may be*] of the said pieces or parcels of land and appurtenances thereunto belonging. [*If damage has been done by severance or otherwise, alter the form accordingly.*]

Witness our hands, this — day of —, A.D. —.

G. H. } Directors of the said railway
I. K. } company.
[Or “L. M., Secretary [or ‘Treasurer’]
of the said railway company.”]

If the claimant desires that a special jury should be summoned, he should forthwith, on the receipt of the above notice, give notice of such his desire. The following may be the form:—

21. Notice from the owner to the company, requiring that compensation shall be assessed by a special jury. (8 & 9 Vict. c. 18, s. 54, ante, App. 54.)

No. 21.

To the — Railway Company.

I, the undersigned A. B., having received from you a notice, dated the — day of —, and signed by —, stating your intention to cause a jury to be summoned for the purpose of assessing and determining the sum of money to be paid by you for the purchase in fee simple in possession [*as the case may be*] of the pieces or parcels of land belonging to me, described or referred to in the said notice, do hereby give you notice that it is my desire, which I do hereby signify to you, that such question of compensation as aforesaid shall be tried before a special jury in the manner mentioned in, and for such case provided by, the Lands Clauses Consolidation Act, 1845.

Witness my hand, this — day of —, A.D. 18—.

A. B.,
of [*here insert address*].

22. Notice from the company that a private road will be required for the temporary use of the company. (See 8 & 9 Vict. c. 20, s. 30, ante, App. 81, and see text, 206.)

No. 22.

— Railway.

The — Railway Company, incorporated by virtue of an act, intituled [*insert the title of the special act*], hereby give notice to you, and each and every of you, that, under the powers in the said act contained, the said company intend, at the expiration of three weeks from the service hereof, to enter upon and use a certain private road, situate in the parish of —, in the county of —, and called — lane [*describing the road with particularity*], (the same being a road which the said company are by the said act authorized to use), and that they the said company intend to use the said road for the purpose

of passing and repassing thereon, by themselves, their engineers, contractors, agents, servants, workmen, labourers and other persons employed in and about the construction of the said railway, and the works connected therewith, and also by and with such horses, carts, waggons and other carriages (whether loaded or unloaded), as may be necessary for constructing the said railway and works, and otherwise carrying the said act into execution. And further take notice, that the said company require and intend to occupy and use the said road in manner aforesaid for the space of — months from the expiration of the said period of three weeks after the service hereof, and that they are willing to pay to you, and all parties entitled, such compensation for the use and occupation of such road as may be agreed upon, or as shall be otherwise settled according to law.

As witness our hands [or "my hand"], this — day of —, in the year of our Lord —.

E. F. and G. H., Directors of the said company,
[or "I. K., Secretary," or "Treasurer" of
the said company.]

To A. B., Esq., owner, and C. D., Esq.,
occupier, of the road mentioned in the
above notice, and to all other persons
whom it may concern.

No. 23.

To the — Railway Company.

Whereas, by a certain notice under the hands of A. B. and C. D. [*as the case may be*], bearing date the — day of — last, I am informed that you intend to enter upon, occupy and use a certain private road belonging to me, in my occupation, and situate on lands belonging to me, situate at, &c.: Take notice that I, the undersigned E. F., being the owner and occupier of such road, and being the owner of the lands over which the said road passes, do hereby, in pursuance of the statute in that case made and provided, object to your making use of such road, or of any part thereof; and the ground of my said objection is, that there is another private road, [or "there is a public road"], situate in the parish of —, and called — lane [*particularly describing the road*], which you the said company are authorized to use for the purposes in your said notice mentioned, and which said road is more fitting to be used for the said purposes than the road mentioned in your said notice. And further take notice, that you are hereby required not to enter upon or use the said road, referred to in your said notice, in any manner whatsoever, and that it is intended forthwith to apply for an order of justices, to prevent the said first-mentioned road from being taken or used by you.

Witness my hand, this — day of —, in the year of our Lord —.

E. F.,
of [place of abode].

23. Notice from the owner, &c. of a private road, to the company, requiring them not to use the road, on the ground that an adjoining road would be more fitting to be used. (See 8 & 9 Vict. c. 20, s. 31, ante, App. 81, and see text, 206.)

No. 24.

The — Railway Company.

Whereas, by virtue and under the authority of an act of Parliament, intituled [*here insert the title of the special act*], we, the — Railway Company, by a certain notice, bearing date the — day of —, informed you, A. B. and C. D., &c., that all those parcels of lands, tenements and hereditaments mentioned and described in the schedule to the notice annexed [or particularly described in a map or plan to the notice also annexed, *as the case may be, see Form, No. 3, ante, 274*], situate at, &c., belonging or reputed to belong to you [or some or one of you], or in which you [or some or one of you] had or claimed some estate or interest, were required to be taken and used by the said railway company, incorporated by the said act, for the purposes thereof as in the said notice is particularly mentioned; and whereas you, the said A. B. and C. D., &c., have failed to state the particulars of your claims for purchase-money or compensation for injuries or damage in respect of the said lands, tenements and hereditaments, or to treat with the said company in respect thereof, as by the said notice you were required to do [or, "and whereas we the said company and you the said A. B. and C. D., &c. have not agreed, and we cannot agree, as to the amount of the purchase-money or compensation to be paid by us the said company to you for the purchase of the said hereditaments and of your estate and interest therein, or of the estate and interest therein which by the said act you are enabled to sell and convey, and for any damage which might be sustained by you by reason of the execution of the said railway works:"] Now we the said company hereby, in pursuance of the said act, give you notice, that it is the intention of the said company, after the expiration of ten days from the service of this notice, and in pursuance of the provisions in the said act contained, to issue our warrant to the sheriff or other proper

24. Notice from the company to the owner of lands, that they intend to issue a warrant to the sheriff, and stating the sum which the company are willing to pay for the lands, &c. (8 & 9 Vict. c. 18, s. 83, ante, App. 51, and see text, 187.)

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officer of the county of —, and to cause a jury to be summoned to inquire of and assess the amount of such purchase-money and compensation as aforesaid, which you or either of you are entitled to receive under the provisions of the said act. And further take notice, that we the said company are willing to give the sum of — pounds for the purchase of the absolute and unencumbered fee simple and inheritance in possession of the said lands, tenements and hereditaments, including your estate and interest therein, and the estate and interest therein which by the said act you are enabled to sell and convey, and for any damage or injury, by severance or otherwise, which may be sustained by you the said A. B., C. D., &c., by the execution of the said railway works.

Witness our hands, the — day of —, A.D. —.

G. H. } Directors of the said
I. K. { railway company.
[Or, "L. M., Secretary, &c."]

To A. B., Esq., and C. D., Esq., and all other parties claiming satisfaction or compensation for the above-mentioned hereditaments, or any estate, share, interest or charge in or affecting the same, or for any injury or damage occasioned by the taking of the said hereditaments by the said company, or otherwise by reason of making the said railway, or on account of the execution of the said act, and to all other persons whom it may concern.

No. 25.

The — Railway Company.

[The name of the county] } To the Sheriff of the county of —.
to wit. }

Whereas, the — Railway Company, established and incorporated by an act of Parliament made and passed in the — year of the reign of her Majesty Queen Victoria, intituled the — Railway Act, 18—, in which act are incorporated the Lands Clauses Consolidation Act, 1845, the Companies Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation Act, 1845, on or about the — day of — gave to and duly served upon A. B. [the owner], of, &c., a notice in writing, addressed to him and bearing date the — day of —, and signed by —, the secretary of the said company, which notice was in the words or to the effect following [here copy the notice]: "And on or about the — day of — the said company also gave to and duly served upon C. D. [the second party served], of, &c., a notice in writing addressed to him, and bearing date the said — day of —, and signed by the said —, as such secretary as aforesaid, which last-mentioned notice was in the words or to the effect following, that is to say" [here copy the second notice]: And whereas each of them the said A. B. and C. D. failed to treat with the said company in respect of the pieces or parcels of land and other hereditaments described or referred to in the schedule written under the notice to him given, and addressed as aforesaid, for the space of twenty-one days next after the service upon him of the same notice, and thereupon the said company, in pursuance of the provisions contained in the said Lands Clauses Consolidation Act, 1845, gave to and duly served upon the said A. B. and C. D. respectively the several notices next hereinafter mentioned or referred to, that is to say, on or about the — day of —, the said company gave to and duly served upon the said A. B. a notice in writing addressed to him, dated the — day of —, and signed by the said —, as such secretary as aforesaid, which notice was in the words or to the effect following, that is to say [here copy the notice of intention to summon a jury], and on or about the — day of — the said company gave to and duly served upon the said C. D. a notice, &c. [copying it]: And whereas on or about the — day of — the said A. B. and C. D. gave to and duly served upon the said company notice in writing, addressed to them, dated respectively the — day of —, and signed by the said A. B. and C. D. respectively, which notice was in the words or to the effect following, that is to say [here copy the notice (if any) for a special jury]: Now therefore we the said — railway company, in pursuance of and in obedience to the provision contained in the said Lands Clauses Consolidation Act, 1845, do by this our warrant, under our common seal, issued to you the sheriff of the said county of —, require you to summon a jury in compliance with the directions of the same act, to determine by their verdict the sum or sums of money to be paid by the said company for the purchase by them in fee simple in possession of the said pieces or parcels of land described or referred to in the said notice of the — day of —, and the appurtenances thereto belonging; and also the sum or sums of money to be paid by the said company for the damage (if any) to be sustained by the owner of the said pieces or parcels of land and other premises by reason of the severing thereof from the other lands of such owner, or otherwise injuriously affecting such lands, by the exercise of the powers of the said Lands Clauses Consolidation Act, 1845, or the said — Railway Act, 18—, or any act incorporated therewith. [If the

25. Warrant from the company to the sheriff requiring him to summon a jury. (8 & 9 Vict. c. 18, s. 39, ante, App. 52, and see text, 301.)

question is to be tried before a special jury, say—"And the said ——— Railway Company, in pursuance of the said several notices of the said A. B. and C. D. respectively in this behalf, and in further obedience to the provisions of the said Lands Clauses Consolidation Act, 1845, do by this their warrant also require you the said sheriff to nominate a special jury for such trial.]

Given under our common seal this ——— day of ———, A.D. 18.

No. 26.

[The name of the county] } To the Sheriff of ———.
to wit.

Whereas, we the ——— Company, incorporated by an act of Parliament, intituled [*insert title of special act*], and by the said act authorized to purchase or take for the purposes thereof the lands, tenements and hereditaments hereinafter particularly mentioned, by a notice in writing, bearing date the ——— day of ———, duly given by us in pursuance of the said act, did inform A. B., C. D., &c., that the said lands, tenements and hereditaments belonging or reputed to belong to them [*or "some or one of them"*], or in which they [*or "some or one of them"*] claimed some estate or interest, were required to be taken and used by us the said railway company for the purposes of the said act; and that the said company were willing to treat for the absolute purchase of the said lands, tenements and hereditaments, and of the interest of them the said A. B. and C. D., &c., therein, or which they were by law enabled to sell and convey, and as to the compensation to be made to them the said A. B., C. D., &c., and all parties interested, for the damage or injury that might be sustained by reason of the execution of the railway works: And whereas the said A. B., C. D., &c., have, for the space of twenty-one days after the service of the said notice, failed to state the particulars of their claims in respect of the said lands, tenements and hereditaments, or to treat with us the said company in respect thereof. [*Or, "And whereas we the said company, and the said A. B. and C. D., &c., have not agreed and cannot agree as to the amount of the purchase-money or compensation as aforesaid, to be paid by us to them."*] And whereas we the said company, by a notice in writing, bearing date the ——— day of ———, duly given by us in pursuance of the said acts, did inform the said A. B., C. D., &c., of our intention to cause a jury to be summoned to assess such purchase-money and compensation as aforesaid; and also of the sum of money we were willing to give for the purchase of the said lands, tenements and hereditaments, and for the damage to be sustained by reason of the execution of the said railway works: Now we the said ——— Railway Company do, by this our warrant, in pursuance of the powers conferred upon us in that behalf by the said acts, require you the said sheriff to summon and return a jury of twenty-four indifferent men duly qualified according to law, to be and appear before you the said sheriff at some convenient time and place to be appointed by you (such time not being less than fourteen nor more than twenty-one days after the receipt by you of this our warrant, and such place not being more than eight miles distant from the lands hereinafter described), in order that you the said sheriff may cause to be drawn in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn, out of the persons so to be summoned, and who shall appear, a jury of twelve men; or if a sufficient number of jurymen do not appear in obedience to the said summons, then that you the said sheriff may return a sufficient number of indifferent men duly qualified as aforesaid of the bystanders or others that can be speedily procured to make up the said jury to the number of twelve, you the said sheriff allowing all parties concerned their lawful challenges against any of the said jurymen according to law; and such jury summoned and drawn shall, upon their oaths, affirmations or declarations, as the case may be, inquire of and assess and give a verdict for the sum or sums of money to be paid by us the said company to the said A. B., C. D., &c., or other the person or persons interested therein for the purchase of the lands, tenements and hereditaments hereinafter mentioned, and for the purchase of every estate, share, right, interest or charge of them the said A. B., C. D., &c., each and every of them, in, upon or affecting the said lands, tenements and hereditaments, or which they, any or either of them are or is by the said act enabled to sell, convey or release [*if the lands are to be severed, add the following: And also for the sum or sums of money to be paid by us the said company for the damage to be sustained by the owner or owners of the said lands, tenements and hereditaments, by reason of the severing thereof from the other lands, tenements and hereditaments of such owner or owners, or otherwise injuriously affecting such lands by the exercise of the powers of the said act of Parliament, or any act or acts incorporated therewith*], that is to say, firstly, all that piece or parcel of land, &c., situate at a place called ———, in the parish of ———, in the said county, containing by estimation — A. — R. — P., or thereabouts, which said piece or parcel of land and premises are delineated and described on the map or plan and book of reference deposited in the office of the clerk of the peace for the said county of ——— [*or all those parcels of land, tenements and hereditaments mentioned in the schedule hereunto annexed, &c., as in the form No. 3, ante, 274. The*

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26. Another and more special form of warrant from the company to the sheriff requiring him to summon a jury. (8 & 9 Vict. c. 18, s. 39, ante, App. 52, and see text, 301.)

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description of the lands should be accurately stated, and it should agree in all respects with the description in the notice to treat.]

And the said jury shall also in like manner inquire of and assess and give a verdict for the sum or sums of money to be paid by the said company to the said A. B., C. D., &c., [each and every of them], being the parties interested in the said lands, tenements and hereditaments, &c., for all damage sustained by them or any of them by reason of the exercise, as regards such lands, tenements and hereditaments, of the powers by the said act vested in the said company. And the said jury shall further, upon their oaths, affirmations or declarations as aforesaid, inquire of and by their verdict ascertain and settle all such other matters and things as they may, by virtue of the provisions of the said act or otherwise, be lawfully required to do.

Given under our common seal this — day of —, A.D. —.

No. 27.

The Sheriff of — to the — Railway Company, greeting.

27. Notice from the sheriff to the company of the time and place of holding the inquisition. (8 & 9 Vict. c. 18, s. 41, ante, App. 52, and see text, 301.)

Whereas by a warrant to me directed, under your common seal, bearing date the — day of —, I am required to summon a jury to inquire into and assess the purchase-money and compensation to be paid by you the above-mentioned company to A. B. and C. D., &c., in respect of certain lands, tenements and hereditaments in the said warrant mentioned: Take notice, that the said inquiry will be held, in pursuance of the said warrant and of the statute in that case made and provided, on the — day of — next, at the house of —, commonly called or known by the name or sign of —, in — street, at —, in the county of —, at the hour of — o'clock in the forenoon.

Dated this — day of —, A.D. —.

By the same sheriff.
(L. S.)

No. 28.

28. Notice by the company to the claimant of the time and place of holding the inquisition. (8 & 9 Vict. c. 18, s. 46, ante, App. 53, and see text, 301.)

In pursuance of the provisions of an act of Parliament, intituled [*title of special act*], and of "The Lands Clauses Consolidation Act, 1845," notice is hereby given to you, that a jury to be summoned, impanelled and returned according to the provisions of the said acts, will come before the sheriff of the county of —, at the house of, &c., on —, the — day of —, at — of the clock in the forenoon of the same day, for the purpose of inquiring of, assessing and giving a verdict for the sum of money to be paid for the purchase of &c., and which pieces and parcels of land, hereditaments and premises, and the buildings thereon (more particularly mentioned and described in a certain notice in writing from the said company served upon you on the — day of — last) are about to be purchased and taken under the authority of the said acts, to be used for the purposes of the said railway, and whereof, whereto or wherein you or some or one of you are or is possessed, entitled or interested, or are or is reputed so to be, and also the sum of money to be paid by way of satisfaction or compensation to the owners, or reputed owners and occupiers, of the said pieces or parcels of land, buildings, hereditaments and premises hereinbefore mentioned, or any of them, or other the persons interested therein respectively, for the damage which, before the said — day of — next, shall have been done to or sustained by such owners and occupiers as aforesaid, or any or either of them, or other the persons interested therein, respectively, by reason of the execution of any of the works by the said act authorized; which satisfaction or compensation is to be inquired into and assessed separately and distinctly from the value of the lands, buildings, hereditaments and premises so required to be taken as aforesaid; when and where you and each of you are requested to attend, and when and where you and each of you are hereby required to produce all and every of your grants, leases, agreements for leases, valuations, receipts for rent, and other evidence, papers and writings whatever relating to the said lands, buildings, hereditaments and premises, and the several interests therein aforesaid, or any of them. Dated, &c.

To A. B. and B. C., and to all and every
the owners, lessees and occupiers of the
said premises, or any of them, and all
and every person having any estate or
interest therein.

No. 29.

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[The name of the county] } An inquisition indented and taken pursuant to the —
to wit. } Railway Act, 18—, and The Lands Clauses Consolidation Act,
1845, which is incorporated in the said — Railway Act, 18—, or one of the said acts, at the
house of &c., such house not being more than eight miles distant from the lands herein-
after mentioned, on the — day of —, A.D. 18—, before me, —, esquire, sheriff of
the said county, by virtue of a certain warrant hereunto annexed, which said warrant was
received by me [not less than fourteen nor more than twenty-one days before the said —
day of — (*the day appointed for the inquiry*)] (a) issued under the common seal of the
— and — Railway Company, established and incorporated by the said — Railway
Act 18—, on the oaths of [*state the names of the jury*] (b), indifferent persons duly qualified
to act as common jurymen in the superior courts, and sworn (c) to inquire of and con-
cerning the matter by the said warrant hereunto annexed directed to be determined,
ascertained or settled by them as therein mentioned; (that is to say,) — [A. B., *the*
owner] in the said warrant named, and the — Railway Company, by their respective
counsel, agents or attornies, having at the place and time aforesaid appeared before me
and the jurors aforesaid (d), the said jurors on their oaths aforesaid say, that they do assess
and give a verdict for the sum of £—, to be paid by the said company for the purchase
by them in fee simple in possession, free from incumbrances, of the pieces or parcels of
land and other hereditaments described or referred to in the [schedule written under the]
said warrant hereunto annexed, and the appurtenances thereto belonging: And the jurors
aforesaid, on their oaths aforesaid, further say, that they do assess and give a verdict for
the further sum of £— to be paid by the said company, as and by way of compensation
for the damage to be sustained by the owner of the said pieces or parcels of land and
other hereditaments by reason of the severing thereof from the other lands of such owner,
or otherwise injuriously affecting such lands by the exercise of the powers of the said
Lands Clauses Consolidation Act, 1845, or the said — Railway Act, 18—, or any act
incorporated therewith: and I the said sheriff do hereby adjudge and order the said sums
of £— and £— to be paid by the said — Railway Company, according to the
provisions of the said Lands Clauses Consolidation Act, 1845. In witness whereof I have
hereunto set my hand and seal, and the jurors aforesaid have hereunto set their hands
and seals, the day and year first above written.

29. The inquisi-
tion, verdict and
judgment. (8 & 9
Vict. c. 18, ss. 49,
50, ante, App. 53,
and see text, 302,
306.)

No. 30.

— shire } An inquisition, verdict and judgment had, taken and given at the house
to wit. } of, &c., such house not being more than eight miles distant from the lands
hereinafter mentioned, on the — day of —, A.D. —, before me W. B., Esq., sheriff
of the county of —, pursuant to an act of Parliament, intituled, &c. [*insert title of special*
act], on the oaths of Henry Pitt, &c. [*naming the jurors*], indifferent persons, duly qualified
to act as common jurymen in the superior courts here, duly impanelled, summoned and
returned by me the said sheriff, in pursuance of and in obedience to a warrant made and
issued under the common seal of — Railway Company to me directed and delivered,
and hereunto annexed, which said warrant was received by me not less than fourteen nor
more than twenty-one days before the said — day of — (*the day appointed for the*
inquiry); notice in writing having been heretofore duly given to A. B., C. D., &c., by the
said company, according to the said act, that the lands, tenements and hereditaments
hereinafter mentioned were required to be taken and used for the purposes of the said act,
and that the said company were willing to treat for the purchase thereof, and for the
purchase of the estate, share, right, interest or charge of the said A. B., C. D., &c., in,
upon or affecting the same, or which by the said act they were enabled to sell, convey or
release; and, as to the compensation to be made to them for the damage that might be
sustained by them by reason of the execution of the said railway works; and they the
said A. B., C. D., &c., not having, within the space of twenty-one days and more after
the giving of such notice, agreed with the said company as to the amount of the compen-

30. A more special
form of inquisi-
tion, verdict and
judgment. (8 & 9
Vict. c. 18, ss. 49,
50, ante, App. 53,
and see text, 302,
306.)

(a) Or, instead of the words in brackets,
insert—[on the — day of —, but the
time for summoning the jury hereinafter
mentioned was, by the consent of the parties
interested, enlarged from the twenty-one
days directed by the 41st section of the
Lands Clauses Act, 1845].

(b) Or, if the facts require it, insert—
[such persons alone appearing out of the
jury of twenty-four [*if special*, twenty]
summoned by me the said sheriff in pur-

suance of the 41st section of the Lands
Clauses Act, 1845, but nevertheless being
accepted by the parties interested as a jury
in lieu of the jury of twelve persons by the
42nd section of the same act directed to be
drawn by me the said sheriff].

(c) Or—[having made affirmation].

(d) If the facts require it, insert—[and
the jurors aforesaid having previously had
a view of the said premises].

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sation to be paid by the said company for the purchase of the said lands, tenements and hereditaments, or for the purchase of the estate, share, right, charge or interest in, upon or affecting the same, of them the said A. B. and C. D. therein, or which by the said act they were enabled to sell, release and convey; and, as to the amount of the compensation to be paid for any damage which might be sustained by them the said A. B. and C. D., &c., by reason of the execution of the said railway works [or "and the said A. B. and C. D., &c., having failed for twenty-one days after the service of such notice to state the particulars of their claims in respect of such lands, tenements and hereditaments, and to treat with the said company in respect thereof"]; and notice in writing having been heretofore duly given to the said A. B. and C. D., &c., by the said company, according to the provisions of the said act, ten days and more before the issuing of the said warrant, of the intention of the said company to issue their warrant, directed to me the said sheriff, to cause a jury to be summoned to inquire of and assess the amount of the purchase-money and compensation to be paid by the said company as aforesaid to the said A. B. and C. D., &c., for the purchase of the said lands, tenements and hereditaments, and in respect of their said estate, share, right, charge or interest therein as aforesaid, and also of the sum of money which they the said company were willing to give for the purchase of the said lands, tenements and hereditaments, and the interest of them the said A. B. and C. D., &c., in such lands, tenements and hereditaments, and for the damage to be sustained by them by the execution of the said railway works; and, notice in writing having been also duly given ten days and more before the said — day of — [the date of holding the inquisition], to the said A. B. and C. D., &c., of the time and place of holding this inquiry; which said H. Pitt, &c. [naming the jurors], being duly sworn to inquire of and concerning the matters mentioned in the said warrant, and thereby directed to be inquired of, assessed and ascertained by them in manner therein mentioned; and the said A. B., &c., by their counsel, having, at the time and place aforesaid, appeared before me and the said jurors, and having produced evidence before me and the said jurors touching the matter in question; and the said company named in the said warrant having also, by their counsel, appeared at the time and place aforesaid, before me and the said jurors, but having declined to produce any evidence: The said jurors aforesaid, upon their oath aforesaid, say, that they do assess and give a verdict for the sum of £ —, to be paid to the said A. B. and C. D., &c., by the said company, for the absolute purchase in fee simple in possession, free from incumbrances, of all those pieces or parcels of land, &c. [describing the premises by referring to a schedule or otherwise], and also for the purchase of all and every the estate, right, share, interest or charge of them the said A. B., C. D., &c., each and every of them, in, upon, or affecting the said lands, tenements and hereditaments, or any part or parcel thereof, or which they the said A. B. and C. D., &c., or any or either of them, are or is, by the said act, enabled to sell, convey or release; and also as and for compensation for all damage sustained by the said A. B., C. D., &c., any or either of them, by reason of the execution of the said railway works, or by the exercise, as regards such lands, tenements and hereditaments, of the power by the said act vested in the said company. [If the lands are to be severed, add the following:—(except only compensation for the damage to be sustained by the said A. B., C. D., &c., by reason of the severing of the said lands, tenements and hereditaments from the other lands of the said A. B., C. D., &c., or otherwise injuriously affecting such other lands by the exercise of the said powers); and the said jurors do, in like manner, upon their oath as aforesaid, assess and give a verdict for the further sum of —, to be paid to the said A. B., C. D., &c., by the company, by way of compensation for the damage to be sustained by them by reason of the severing of the said lands, tenements and hereditaments from the other lands of them the said A. B., C. D., &c., or otherwise injuriously affecting such other lands by the exercise of the powers of the said act.] Whereupon I, the said sheriff, in pursuance of the said act of Parliament, do pronounce and give judgment for the said purchase-money and compensation so assessed as aforesaid by the said jurors, amounting together to the sum of —, to be paid by the said company to the said A. B. and C. D., &c.

In witness whereof, I, the said sheriff, have hereunto set my hand and the seal of my office, and the jurors aforesaid have hereunto set their hands and seals, the day and year first above written.

(L. S.)

31. Appointment of two surveyors to determine the amount of purchase-money or compensation to be paid for lands purchased from parties under any disability or incapacity. (8 & 9 Vict. c. 18, s. 9, ante, App 47, and see text, 172.)

No. 31.

To all to whom these presents shall come, the — Railway Company, incorporated by an act of Parliament intituled the — Railway Act, 184—, and A. B. [the tenant for life or other party under disability], of &c., send greeting: Whereas, by virtue of the above-mentioned act of Parliament, and of the act or acts of Parliament incorporated therewith, the above-named railway company are authorized to purchase and take, for the purposes of the said railway, the several pieces or parcels of land described or referred to in the schedule hereunder written, and the said railway company have given due notice of their intention to take the lands for the purposes aforesaid to the parties interested in the said

lands: And whereas, by the last will and testament of —, deceased, bearing date the — day of —, the said pieces or parcels of land, together with other hereditaments, stand limited to the use of the said A. B. for his life, without impeachment of waste, with divers remainders over [*this recital will vary according to the circumstances of each case*]: Wherefore, according to the provisions contained in the Lands Clauses Consolidation Act, 1845, the same being one of the acts incorporated with the said — Railway Act, 18—, it is requisite that the purchase-money or compensation to be paid for the purchase of [*or add, "and for any permanent damage and injury to,"*] the said pieces or parcels of land and hereditaments shall not be less than shall be determined by the valuation of two able practical surveyors, one to be nominated by the said company, and the other by the said A. B.: Now, therefore, be it known, that, in pursuance of and in obedience to the directions of the said act or acts of Parliament in this behalf, the said — Railway Company do hereby nominate on their behalf C. D., of —, &c., an able practical surveyor, and the said A. B. doth hereby nominate on his behalf E. F., of &c., an able practical surveyor, to be the two surveyors for the purpose of determining by their valuation the amount of * the purchase or compensation money to be paid by the said company for the purchase by them in fee simple in possession of the said pieces or parcels of land described or referred to in the said schedule hereunder written, and the appurtenances thereto belonging: [*If the lands are severed from other lands, then add, "and also for the purpose of determining the amount of the compensation money to be paid by the said company, for the permanent damage or injury occasioned by the said railway works to such pieces or parcels of land and hereditaments, and to lands and property adjacent thereto, or to any part thereof respectively"*]. In witness whereof the said company have affixed their common seal, and the said A. B. has set his hand to these presents, this — day of —, A.D. 18—.

[The schedule above referred to.]

All, &c. [*the description of the lands, &c.; see ante.*]

No. 32.

To A. B. [*the tenant for life, &c.*]

This is to give you notice, that C. D. and E. F., the two surveyors who, by a certain nomination in writing, bearing date the — day of — now last past, to which the common seal of [*the — Railway Company, incorporated by the Railway Act, 18—*] is attached, and your signature is affixed, were nominated for the purpose of determining by their valuation the purchase-money or compensation [*here shortly recite the contents of the nomination*], cannot agree in the valuation, to make which they were nominated as aforesaid: and therefore the said — Railway Company, in pursuance of the power for this purpose given in the Lands Clauses Consolidation Act, 1845, intend to apply on the — day of — now next ensuing, to two of her Majesty's justices of the peace assembled and acting together at —, to nominate a third surveyor to determine all and every the matters by the said nomination or instrument in writing referred to the determination of the said C. D. and E. F. Dated the — day of —, 18—.

(Signed) A. B., Secretary of the Railway Company.

No. 33.

To all to whom these presents shall come, —, of &c., and —, of &c., two of her Majesty's justices of the peace acting in and for the county of —, send greeting: Whereas, by a certain appointment in writing, bearing date on [*recite the appointment of two surveyors; ante, No. 31*]; and whereas the above-mentioned C. D. and E. F. cannot agree as to the amount of the purchase-money or compensation to be paid for the said pieces or parcels of land, whereupon application was made to us by the said — Railway Company [*or "by the said A. B."*] to make such nomination of a surveyor as is herein-after expressed, which we have consented to do: Now, therefore, be it known, that, in pursuance of and obedience to the provisions contained in the Lands Clauses Consolidation Act, 1845, in this behalf, and we the said justices having received proof satisfactory to us that the said C. D. and E. F. cannot agree in the valuation of the said pieces or parcels of land in the said hereinbefore-recited appointment, bearing date the — day of — mentioned, and that due notice in writing of the making of this application has been given by the said company to the said A. B. [*or "by the said A. B. to the said company," or as the case may be*], do, by this writing under our respective hands, nominate, —, of &c., an able practical surveyor, to determine by his valuation the amount of [*here proceed from * in the precedent, No. 31, to the end*]. In witness whereof we the said [*justices*] have respectively set our hands and seals to these presents this — day of —, 18—.

H.

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32. Notice of intention to apply to two justices to appoint a third surveyor. (8 & 9 Vict. c. 18, s. 9, ante, App. 47, and see text, 172.)

33. Nomination of a surveyor by two justices to determine a question of compensation where the two surveyors appointed by the parties cannot agree. (8 & 9 Vict. c. 18, s. 9, ante, App. 47, and see text, 172.)

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34. Valuation made by two surveyors of lands taken or purchased from parties under any disability or incapacity. (8 & 9 Vict. c. 18, s. 9, ante, App. 47, and see text, 172.) (c)

No. 34.

Be it remembered, that we, C. D. and E. F., of &c., the two surveyors who, by a nomination in writing, bearing date the — day of — last, were nominated, I, the said C. D., by and on behalf of the — Railway Company, incorporated by the — Railway Act, 18—, and I the said E. F., by and on behalf of A. B., of —, &c., the tenant for life of the lands hereinafter described [*as the case may be*], to determine by our valuation the purchase-money or compensation to be paid by the said company for and in respect of the pieces or parcels of land hereinafter described, do declare that we, the said C. D. and E. F., having valued the same pieces or parcels of land [*or “and having ascertained the permanent damage which hath been and will be occasioned to such lands and to adjacent lands and property belonging to the said A. B. by the said railway”*], are of opinion, and accordingly by this our valuation in writing determine, that the sum of £— sterling is the value and shall be paid by the said company for the purchase by them in fee simple in possession, free from all incumbrances, except the land-tax and tithe commutation rent-charge, of the pieces or parcels of land described or referred to in the schedule hereunder written, and the appurtenances to the same premises belonging or in anywise appertaining [*or “and that the sum of £— sterling is the compensation money, and shall be paid by the said company for or in respect of permanent damage and injury which hath been and will be occasioned to the said lands and property adjacent thereto, and belonging to the said A. B., by the said railway and the works thereof”*]; And we do declare that this our valuation is correct. In witness, &c.

35. Bond given by a railway company and two sureties to enable the company to enter on lands before the amount of the compensation or purchase-money is agreed upon. (8 & 9 Vict. c. 18, ss. 85, 86, ante, App. 60, and see text, 194.)

No. 35.

Know all men by these presents, that we, the — Railway Company, incorporated by an act of Parliament, intituled “The — Railway Act, 18—,” and A. B., of &c., and C. D., of &c. (the said A. B. and C. D. being sureties approved of by E. F. and G. H., Esquires, two of her Majesty’s justices of the peace acting in and for the county of —, by writing under their hands bearing date the — day of —, pursuant to the statute in that case made and provided), are held and firmly bound to E. F. [*the owner*], of &c., in the sum of £—, of lawful money of Great Britain and Ireland, to be paid to the said [*owner*] or his certain attorney, executors, administrators or assigns, for which payment well and truly to be made, we the said company bind ourselves and our successors; and we the said A. B. and C. D. bind ourselves and each of us, and the heirs, executors and administrators of ourselves, and each of us respectively, firmly by these presents, sealed with the common seal of us the said company, and with the respective seals of us the said A. B. and C. D. Dated this — day of —, in the year of our Lord 184—.

Whereas, by virtue of the above-mentioned act of Parliament, or of the act or acts of Parliament incorporated therewith, the above-bounden railway company are authorized to purchase and take for the purposes of the said railway the lands described or referred to in the schedule hereunder written, of which the above-named E. F. is the owner or reputed owner; And whereas notice in writing bearing date on or about the — day of —, was duly given to the said E. F. [*here shortly recite the notice*]; And whereas the said E. F., on or about the — day of — last, made his claim in writing, whereby he demanded the sum of £— for the purchase by the company, in fee simple in possession, of the said lands, and as compensation to be made for the damage that would be sustained by him by reason of the making of the said railway; And whereas the said company disputed the said claim, and they have requested the said E. F. to abate the same, which he has declined to do, and has refused to treat further with the said company respecting the said premises; And whereas [*here recite any steps which may have been taken for the purpose of determining, by arbitration or otherwise, the amount of the compensation*]; And whereas the said company are desirous of entering upon and using the said lands before the purchase-money or compensation to be paid by them in respect of the same has been agreed upon or settled according to law: Wherefore, in compliance with and obedience to the act or acts of Parliament above mentioned, the said company, on the — day of — last, deposited by way of security the sum of £—, being the full amount claimed by the said E. F. as aforesaid, into the Bank of England, in the name and with the privity of the accountant-general of the Court of Chancery, to his account there, to the credit of the said E. F., and subject to the control and disposition of the said court, as appears by the receipt in writing of the cashier of the said bank: Now, therefore, the condition of the above-written bond is such, that, if the above-bounden company shall hereafter well and truly pay unto the said E. F., or shall deposit in the Bank of England for the benefit of the parties interested in the said lands, as the case may require,

(c) If the valuation be made by the surveyor appointed by two justices, as in Form, No. 33, the above precedent may be

easily adapted by inserting the necessary recitals.

under the provisions contained in the said act or acts of Parliament above mentioned, all such purchase-money or compensation as may, in manner in the same act or acts provided, be determined to be payable by the above-bounden company in respect of the said lands so to be entered upon as aforesaid, together with interest on such purchase-money or compensation, at the rate of 5*l.* per centum per annum from the time of the entry of the above-bounden company upon the said lands until such purchase-money or compensation shall be paid to the said E. F., or be deposited in the bank for the benefit of the parties interested in the said lands, as the case may require, as aforesaid, then the above-written bond or obligation shall be void and of no effect, otherwise the same shall be and remain in full force and virtue.

Sealed with the common seal of the said company,
and sealed and delivered by the said A. B. and
C. D. in the presence of —.

[The schedule above referred to.]
[Here describe the lands.]

No. 36.

Whereas differences have arisen between the — company on the one part and — of — on the other part, with respect to the compensation claimed by the said — to be paid to — by the said company, for the purchase of certain lands in — required to be taken by the said company for the purposes of the — Act, 18—, and also for the damage to be sustained by the said — by reason of the execution of the works authorized by the said act; and whereas in pursuance of the said act, and the Lands Clauses Consolidation Act, 1845, incorporated therewith, the matters so in dispute have been referred to two arbitrators; and whereas the said arbitrators have, for seven days after request made to them by the said —, neglected to appoint an umpire; and whereas the said — applied to the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations to appoint an umpire in the matters of the said reference: Now therefore, the Lords of the said Committee, in pursuance of the said hereinbefore-mentioned acts, do hereby nominate and appoint — of — to be the umpire to decide on any matter so referred to the said arbitrators, on which they shall differ, or which shall be referred to him under the provisions of the said acts.

Signed by order of the Lords of the said Committee, on — day of — 18—. —, one of the Secretaries of the said Committee.

36. Appointment of umpire by the Board of Trade (*d*).

No. 37.

To all to whom these presents shall come, I (A. B. of —) send greeting:

Whereas under and by virtue of a certain act of Parliament intituled [*insert title of special act*], and of certain acts of Parliament incorporated therewith, a certain railway company was incorporated and authorized to make and maintain a railway from — in the county of —, to — in the county of —, and to purchase and take certain lands which were requisite for the purposes of the said undertaking; and whereas under the powers and provisions contained in the said acts, or some or one of them, the said company were authorized to purchase and take for the purposes of the said undertaking, the lands hereinafter particularly mentioned in the schedule hereunder written, and described on the plan hereto annexed, and coloured green on the said plan; and whereas the said C. D. and E. F. were entitled or claimed to be entitled to sell and convey and release the said lands to the said company under the powers and provisions contained in the said acts, some or one of them; and whereas on or about the — day of —, A.D. 18—, notice in writing was duly given to the said C. D. and E. F., as being the owners or reputed owners of the said lands, by the said company according to the provisions contained in the said acts, some or one of them, that the above-mentioned lands were required to be taken and used for the purposes of the said railway, and that the said company were willing to treat for the purchase of the respective interests of them the said C. D. and E. F. therein, and as to the compensation to be made to them for the damage that might be sustained by them by reason of the execution of the said railway works; and in and by the said notice of the

37. Award under the Lands Clauses Consolidation Act, made by an umpire appointed by the Board of Trade (*e*). (8 & 9 Vict. c. 18, ss. 25 to 37, ante, App. 50, and see text, 282.) (*f*)

(*d*) See ante, text, p. 286, note (*d*).

(*e*) This form may easily be adapted to an award made by a single arbitrator, or by two arbitrators appointed under sect. 25, or by an umpire appointed by the two arbitrators under sect. 27. It will be prudent

in each case to state every fact which is necessary to show jurisdiction.

(*f*) As to the time within which the award should be made, see text, 290, and when awards are invalid, *ibid.* 297.

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said company required the said C. D. and E. F. to deliver a statement in writing of the particulars of their respective estates and interests in the said lands, and of the claims made by them respectively in respect thereof; and whereas in pursuance of the said last-mentioned notice, the said C. D. and E. F., on or about the — day of —, 18—, by a statement in writing under their hands, informed the said company, that they the said C. D. and E. F. were seised and possessed to their own use and benefit of an estate in fee simple in the said lands, and that they claimed the sum of £— as compensation for their estate and interest in such lands, and for the damage they might sustain by reason of the execution of the works authorized to be executed by the said railway acts; and they the C. D. and E. F., (the said company not having then issued their warrant to the sheriff to summon a jury in respect of the said lands) also signified their desire to the said company to have the said question of compensation and damage settled by arbitration, conformably to the directions of the said hereinbefore-mentioned acts, some or one of them; and whereas they the said C. D. and E. F. and the said company did not agree and could not agree as to the amount of compensation and damage to be paid as aforesaid, neither did they the said company offer any sum of money to the said C. D. and E. F., as and for such compensation as aforesaid; and whereas they the said C. D. and E. F. and the said company did not concur in the appointment of a single arbitrator: whereupon the said railway company, in pursuance of the provisions contained in the said acts, some or one of them, duly nominated and appointed, in writing under the hands of two of the directors of the said company, H. J. of —, land surveyor, to be an arbitrator to whom the question of such compensation as aforesaid should be referred, and requested the said C. D. and E. F. also to appoint an arbitrator; and whereas the said C. D. and E. F., in pursuance of the provisions contained in the said acts, some or one of them, and of the said request so made as aforesaid, duly nominated and appointed, by writing under their hands, K. L. of —, land surveyor, as the other arbitrator to whom the question of such compensation as aforesaid should be referred; and whereas the said arbitrators, before they entered into the consideration of the matters so referred to them as aforesaid, duly made and subscribed, in the presence of a justice duly authorized in that behalf, the declaration required by the said acts, some or one of them; and whereas the said arbitrators entered upon the matters so referred to them as aforesaid, but did not, in pursuance of the said acts, some or one of them, nominate and appoint an umpire to decide on any matters in which they might differ, or which were referred to them as aforesaid, but on the contrary they the said arbitrators altogether refused to appoint an umpire within the time prescribed in the said acts, some or one of them: whereupon the said railway company, on or about the — day of —, duly made application in writing to the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations, requesting them to appoint an umpire, in pursuance of the Lands Clauses Consolidation Act, 1845, being one of the said acts incorporated with the said act intituled [*here state the title of the special act*]; and the said lords thereupon, in pursuance of the said request, and of the provisions contained in the said Lands Clauses Consolidation Act, 1845, by writing signed by —, duly appointed me (g), the before-mentioned A. B., to be the umpire in the matter of the said arbitration; and whereas the said arbitrators, by reason of a difference between them, failed to make their award within twenty-one days after the day on which the last of the said arbitrators was appointed, and no extended time was appointed by them for the purpose of making their award, whereby the matters referred to the said arbitrators as aforesaid, and on which they so differed, duly came before me, as umpire: Now know ye that I the said (A. B.), having taken upon me the burthen of making the said award, and having, before taking into consideration any of the matters referred to me, duly made and subscribed, in the presence of a justice duly authorized in that behalf, the declaration required by the said acts, some or one of them, and which said declaration is hereunto annexed; and having been attended [by the said arbitrators, and] by the said parties and their witnesses, [and having also viewed the said lands,] and having also in making this my award regarded not only the value of the land to be purchased or taken, as aforesaid, by the said company from the said C. D. and E. F., but also the damage to be sustained by them, by reason of the severing the said lands taken from the other lands of the said C. D. and E. F., or otherwise injuriously affecting such other lands by the exercise by the said company of the powers contained in the said acts, or either of them, do make this my award in writing concerning the premises, in manner and form following, that is to say, I do award, decide, order and determine that the said company shall pay the sum of £— for the absolute purchase of the fee simple in possession free from incumbrances (save and except the land tax and tithe commutation rent-charge) of all those pieces or parcels of land particularly mentioned and described in the said schedule hereunder written, and also delineated in the said plan hereunto annexed, and numbered respectively 2, 3, 4, 6, &c. to 18, on the said plan, and coloured green; and that the further sum of £— shall be paid by the said company as and for compensation for all damage which will be sustained by the owners of the said lands by reason of the execution of the said works, and by reason of the severing of the said lands from the other lands

(g) See 14 & 15 Vict. c. 64, s. 3, ante, App. 128.

of such owners, or otherwise injuriously affecting such other lands by the exercise of the powers of the said acts.

And I the said A. B., in pursuance of the powers contained in the said acts, some or one of them, do hereby declare that I have settled the costs of the said C. D. and E. F. incident to this arbitration at the sum of £ —, and the costs of and incident to my umpirage and award at the sum of £ —, which said sums are to be paid by [as the case may be] (h). Witness my hand and seal this — day of —, in the year of our Lord 18— (i).

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Forms of Pleadings (k).

1. Statutory Form of Declaration by a Railway Company for Calls made on Shares (l). Form held good on special demurrer. *Birkenhead, Lancashire and Cheshire Junction R. Co. v. Wilson*, 3 Exch. 478, note (d); 6 Exch. 626. See also *Dublin and Wicklow R. Co. v. Black*, 8 Exch. 181.

2. Declaration by Vendee against Vendor for not delivering Scrip Certificates—*Tempest v. Kilner*, 2 C. B. 300; *Hazeltine v. Siggers*, 1 Exch. 856. Shares—*Watson v. Spratley*, 10 Exch. 222; *Powell v. Jessop*, 18 C. B. 336; *Stray v. Russell*, 28 Law J. (Q. B.) 279; 29 Law J. (Q. B.) 115.

3. Declaration for not delivering Scrip Certificates to the Plaintiff, in exchange for a Letter of Allotment and Banker's Receipt. *Walstab v. Spottiswoode*, 15 Law J. (Exch.) 193; 15 M. & W. 501.

4. Declaration by Vendor of Shares against Purchaser on implied Indemnity against Calls. *Walker v. Bartlet*, 17 C. B. 446; 18 C. B. 845.

5. Declaration against a Railway Company for refusing to register Plaintiff as proprietor of Shares—*Copeland v. North-Eastern R. Co.*, 6 E. & B. 277. Claim for mandamus under Common Law Procedure Act, 1854—*Ward v. South-Eastern R. Co.*, 29 Law J. (Q. B.) 177. See *Norris v. Irish Land Co.*, 27 Law J. (Q. B.) 115; 8 E. & B. 512; *Bush v. Bevan*, 32 Law J. (Exch.) 54.

6. Declaration against a Railway Company for not carrying Plaintiff safely. *Carpue v. London and Brighton R. Co.*, 3 Railw. C. 692; 13 Law J. (Q. B.) 133; 5 Q. B. 747; *Withers v. North Kent R. Co.*, 27 Law J. (Exch.) 417.

7. Another Form, where Plaintiff sustained Damage by the falling down of a Bridge on a Line of Railway leased by Defendants to another Company. *Grote v. Chester and Holyhead R. Co.*, 2 Exch. 251.

8. Declaration against a Railway Company, as common Carriers, for not delivering perishable Goods in due Time. *Pickford v. Grand Junction R. Co.*, 12 M. & W. 766.

9. A similar Declaration for refusing to carry Goods. *Pickford v. Grand Junction R. Co.*, 8 M. & W. 372; 2 Railw. C. 592.

10. Declaration for negligent Management of Steam Engine, whereby Plaintiff's Premises were burnt. *Piggot v. Eastern Counties R. Co.*, 3 C. B. 229; *Vaughan v. Taff Vale R. Co.*, 28 Law J. (Exch.) 41; 3 H. & N. 743; 29 Law J. (Exch.) 247; *Freemantle v. L. and N. W. R. Co.*, 31 Law J. (C. P.) 12; 10 C. B. (N. S.) 89, ante, text, 539.

11. Declaration for not paying Deposits on Shares allotted to Defendant. *Duke v. Forbes*, 1 Exch. 356.

12. Declaration for not delivering New Shares allotted to Defendant, in respect of Shares sold, with all advantages to accrue in respect thereof, on Defendant's Account by Plaintiff. *Simpson v. Rand*, 1 Exch. 688.

(h) See ante, text, 288. The costs may be awarded by a separate document, see ante, text, 294.

(i) Other useful forms may be found in "Precedents of Conveyances, &c. to Railway Companies," by Messrs. Frend and Ware.

(k) See the Common Law Procedure

Act, 1852, 15 & 16 Vict. c. 76, and adapt these forms to the statements of causes of action in Schedule (B.) See also forms in Bullen and Leake's Precedents of Pleadings.

(l) See also *Belfast and County Down R. Co. v. Strange*, 1 Exch. 739; *Moore v. Metropolitan Sewage Co.*, 3 Exch. 333.

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13. Declaration for Compensation under Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, s. 68, jury not summoned. *Railstone v. York, Newcastle and Berwick R. Co.*, 15 Q. B. 404; *Eastham v. Blackburn R. Co.*, 9 Exch. 758; *Glyn v. Aberdare R. Co.*, 28 Law J. (C. P.) 271.

14. Declaration for similar claim, jury summoned. *Corregal v. London and Blackwall R. Co.*, 5 M. & G. 219; 2 Railw. C. 411; *South-Eastern R. Co. v. Richardson*, 15 C. B. 810; *Chapman v. Monmouthshire R. Co.*, 2 H. & N. 267; 27 Law J. (Exch.) 97; *Mortimer v. South Wales R. Co.*, 28 Law J. (Q. B.) 129; *Fletcher v. Great Western R. Co.*, 28 Law J. (Exch.) 147; 29 Law J. (Exch.) 253.

15. Pleas to action on award or inquisition, that claimant has sustained no injury for which the Lands Clauses Act has given compensation. *Cas. cit. ante*, text, 202, note (m).

16. Mandamus to Railway Company to issue a Warrant to the Sheriff, to summon a Jury to assess Compensation. *R. v. Eastern Counties R. Co.*, 2 Railw. C. 736.

17. Mandamus to Railway Company to make Watering Places for Cattle, on Lands intersected by Railway. *R. v. York and North Midland R. Co.*, 14 Law J. (Q. B.) 277.

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